

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(1) IN GENERAL/1. Legislation in force.

COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (

1. INTRODUCTION

(1) IN GENERAL

1. Legislation in force.

The Copyright, Designs and Patents Act 1988 was passed to restate the law of copyright, with amendments¹; to make fresh provision as to the rights of performers and others in performances²; to confer a design right in original designs³; to make provision with respect to devices designed to circumvent copy-protection of works in electronic form⁴; to make fresh provision penalising the fraudulent reception of transmissions⁵; and to make provision⁶ for the benefit of the Hospital for Sick Children, Great Ormond Street, London⁷.

Substantial amendments have been made to the Act in order to comply with the requirements of certain European Directives⁸ and the provisions of the EEA Agreement⁹.

In addition, regulations have introduced three new property rights, known as 'publication right' (which is equivalent to copyright)¹⁰, database right¹¹ and artists resale right¹².

1 Eg moral rights (apart from the false attribution right) were first accorded statutory protection by the Copyright, Designs and Patents Act 1988. Moral rights include, for example, the right to be identified as the author of a work or the director of a film ('the right of paternity'), the right to object to derogatory treatment of a work ('the right of integrity'), and the right to privacy of certain photographs and films. See PARAS 7, 455 et seq post.

2 Ie the rights of performers and persons having recording rights conferred by ibid Pt II (ss 180-212) (as amended): see PARA 604 et seq post. Under the Performers' Protection Acts 1958-1972 (repealed) only criminal penalties were imposed, although in *Rickless v United Artists Corp*n [1988] QB 40, [1987] 1 All ER 679, CA, it was held that a performer, being a person for whose benefit those Acts had been passed, had a civil right of action.

3 Ie the right conferred by the Copyright, Designs and Patents Act 1988 Pt III (ss 213-264) (as amended): see PARA 501 et seq post. Design right is a right which comes into existence when a qualifying design is recorded in a document or embodied in an article, and there is no requirement for registration. Design right is sometimes referred to as 'the unregistered design right' in contrast to the right conferred by the Registered Designs Act 1949 (as amended) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 681 et seq) in respect of registered designs.

4 See the Copyright, Designs and Patents Act 1988 ss 296-296ZF (as amended); and PARA 485 et seq post.

5 Ie the penalties imposed by ibid s 297: see PARA 491 post.

6 See ibid s 301, Sch 6 (as amended); and PARAS 143, 299 post.

7 See ibid preamble.

8 See PARA 453 post. The Electronic Commerce (EC Directive) Regulations 2002, SI 2002/2013, apply to the Copyright, Designs and Patents Act 1988: see the Electronic Commerce (EC Directive) (Extension) (No 2) Regulations 2003, SI 2003/2500, reg 2, Sch Pt 1. The effect of this application is that the Copyright, Designs and Patents Act 1988 must be read in a way that is compatible with the requirements of the Electronic Commerce

(EC Directive) Regulations 2002, SI 2002/2013, and where a provision in the Act is in conflict with any of the requirements of those regulations, the latter will prevail.

9 Ie the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183).

10 Ie the right conferred by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16: see PARA 497 et seq post. Publication right is conferred on a person who after the expiry of copyright publishes for the first time a previously unpublished work.

11 Ie the right conferred by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Pt III (regs 12-25) (as amended): see PARA 736 et seq post. Database right is a right designed to prevent unauthorised extraction and re-utilisation of the contents of a database.

12 Ie the right conferred by the Artist's Resale Right Regulations 2006, SI 2006/346: see PARA 774 et seq post. Artists resale right is a right enabling authors and their successors in title to receive royalties based on the sale price of their work of art whenever original works of art, in which copyright subsists, are re-sold in transactions involving art market professionals.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(1) IN GENERAL/2. Relevance of earlier legislation.

2. Relevance of earlier legislation.

Moral rights, rights in performances, design right and other related rights are largely creations of the Copyright, Designs and Patents Act 1988¹. Copyright has, however, been protected first by the common law and subsequently by a series of statutes dating from 1709². The Copyright, Designs and Patents Act 1988 does not form a complete code. Many of the expressions used in that Act take their meaning from earlier Acts of Parliament or are intelligible only by reference to decisions made under earlier Acts; and matters of authorship and first ownership of copyright in works created before 1 August 1989³ have to be determined by reference to the law in force at the time the work was made⁴. Since copyright may last for 70 years after the end of the calendar year in which the author died⁵, this means that it may in some cases be necessary to have reference to older legislation when considering matters relating to the copyright in a work⁶.

1 See PARA 1 ante.

2 As to the historical development of copyright see PARA 17 et seq post.

3 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 post.

4 See *ibid* s 170, Sch 1 paras 10, 11; and PARA 16 post.

5 As to duration of copyright see PARA 93 et seq post.

6 As to early legislation relating to copyright see PARA 17 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(i) Copyright/3. Nature of copyright.

(2) THE RIGHTS PROTECTED

(i) Copyright

3. Nature of copyright.

Copyright is the exclusive right to do, and to authorise others to do, in the United Kingdom¹, certain acts in relation to literary, dramatic and musical works, artistic works, sound recordings, films, broadcasts and published editions of works². The acts concerned vary according to the subject matter; in general, the existence of copyright protects the maker of a work from the appropriation of his labours by another. For this reason, it has been said to be a negative right³.

Copyright exists solely by virtue of the Copyright, Designs and Patents Act 1988⁴. Part I of that Act, which deals with copyright, extends to the whole of the United Kingdom⁵. Her Majesty may by Order in Council⁶ direct that Part I is to extend, subject to such exceptions and modifications as may be specified in the Order, to any of the Channel Islands, the Isle of Man or any colony⁷.

Copyright is infringed by any person who, not being the owner of the copyright or his licensee, does any of the acts restricted by the Copyright, Designs and Patents Act 1988 in the United Kingdom⁸.

1 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3. 'England' means, subject to any alteration of boundaries of local government areas, the area consisting of the counties established by the Local Government Act 1972 s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 24), Greater London and the Isles of Scilly: Interpretation Act 1978 Sch 1. 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as originally enacted) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (as amended) (consequential alteration of boundary following alteration of watercourse) (see LOCAL GOVERNMENT vol 69 (2009) PARA 90): Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 PARA 9). As to local government areas see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; and as to boundary changes see LOCAL GOVERNMENT vol 69 (2009) PARA 56 et seq. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

2 See the Copyright, Designs and Patents Act 1988 s 1 (see PARA 57 post), s 2 (see PARA 58 post), s 3 (as amended) (see PARAS 66-67, 73 post), s 4 (see PARAS 75-79 post), s 5A (as added) (see PARA 84 post), s 5B (as added) (see PARA 86 post), s 6 (as amended) (see PARA 89 post), s 8 (see PARA 91 post) and s 16 (as amended) (see PARAS 311-312 post).

3 *Corelli v Gray* (1913) 29 TLR 570 at 571 per Sargant J (affd 30 TLR 116, CA); and see *Gyles v Wilcox* (1741) 2 Atk 141; *Sayre v Moore* (1785) 1 East 361n; *Jarrold v Houlston* (1857) 3 K & J 708; *Rees v Melville* (1914) MacG Cop Cas (1911-16) 168, CA; *Macmillan & Co v Cooper* (1923) LR 51 Ind App 109, PC; *Wesman v McNamara* (1925) MacG Cop Cas (1923-28) 121.

4 Subject to the Copyright, Designs and Patents Act 1988 s 171(2), no copyright or right in the nature of copyright subsists otherwise than by virtue of Pt I (ss 1-179) (as amended) (see PARA 54 et seq post) or some other enactment in that behalf: see s 171(2); and PARA 57 post. As to the evolution of copyright law and the continuing significance of repealed legislation for certain purposes see PARA 16 et seq post; and as to the repeal of the Copyright Act 1911 and the Copyright Act 1956 see PARAS 35 et seq, 54 et seq post.

5 Copyright, Designs and Patents Act 1988 s 157(1). As to the territorial extent of Pt I (as amended) see further PARA 443 post.

6 The power to make Orders in Council is exercisable by statutory instrument: see the Statutory Instruments Act 1946 s 1(1); and STATUTES vol 44(1) (Reissue) PARA 1503. As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

7 Copyright, Designs and Patents Act 1988 s 157(2). As to the orders that have been made and the countries to which the Copyright, Designs and Patents Act 1988 extends see PARA 444 post; and as to the countries to which the Act does not extend see PARA 447 et seq post.

'Colony' means any part of Her Majesty's dominions outside the British Islands except:

- 1 (1) countries having fully responsible status within the Commonwealth;
- 2 (2) territories for whose external relations a country other than the United Kingdom is responsible;
- 3 (3) associated states,

and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature are deemed for the purposes of this definition to be one colony: Interpretation Act 1978 s 5, Sch 1. 'British Islands' means the United Kingdom, the Channel Islands and the Isle of Man: Sch 1. As to the meanings of 'Her Majesty's dominions' and 'the Commonwealth' see COMMONWEALTH vol 13 (2009) PARAS 701, 707.

8 See the Copyright, Designs and Patents Act 1988 s 16; and PARAS 311-312 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(i) Copyright/4. Limits of copyright protection.

4. Limits of copyright protection.

Authors may suffer injury in respect of their works by acts other than those restricted by copyright¹. For example, it is no infringement of copyright in a work to make oral communication of its contents to the world, although this may betray trade or private secrets²; nor is it an infringement of copyright as such to issue a work under a title or with an appearance which will lead the public to believe that it is issued on behalf of, or as the composition of, a particular author, although the author may thereby lose sales of his own work³. In the case of certain designs it is not an infringement of the copyright in any work recording or embodying the design to make articles to that design or to copy articles made in accordance with it⁴; but it may be an infringement of the design right⁵. An assignee of a copyright work has the right to publish the work as he pleases, and it will be no infringement of copyright that his publication may be in a form likely to injure the author's reputation⁶, although there may be an infringement of the author's moral rights⁷. A licence may, however, be subject to an express or implied term controlling the form of publication, so that any publication in breach of the term will not be subject to the licence and will be an infringement of copyright⁸ as well as a possible infringement of the moral rights⁹.

1 As to the acts restricted by copyright see PARA 311 et seq post.

2 As to the right of an author to restrain a breach of confidence see PARA 13 post.

3 As to the non-statutory right of action for passing off see PARA 14 post; and as to the statutory right of action for false attribution of authorship see PARA 471 et seq post.

4 See the Copyright, Designs and Patents Act 1988 s 51 (as amended); and PARA 376 post.

5 As to design right see PARAS 10, 501 et seq post.

6 As to assignment see PARA 160 et seq post. An author who is injured by the form of publication of the work by his assignee where the publication is such as to hold him up to hatred, contempt or ridicule may bring a claim for libel: *Lee v Gibbins* (1893) 67 LT 263. As to defamatory statements generally see LIBEL AND SLANDER vol 28 (Reissue) PARA 39 et seq. As to the restriction on the alteration of artistic works without the licence of the author see PARA 474 post.

7 As to an author's moral rights see PARAS 7, 455 et seq post.

8 *Miller v Cecil Film Ltd* [1937] 2 All ER 464 (where a term was implied that screen credit should be given to an author); cf *Frisby v British Broadcasting Corpn* [1967] Ch 932, [1967] 2 All ER 106; and see PARA 179 post.

9 As to licences see PARA 175 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(i) Copyright/5. Prerogative rights.

5. Prerogative rights.

Apart from statutory entitlement of the Crown to copyright¹, the non-statutory rights and privileges of the Crown are preserved². Although there is no prerogative over printing generally³, exclusive rights are vested in the Crown in respect of certain classes of work which are of a proprietary or religious nature and, in respect of these, licences may be granted by the Crown⁴.

Prerogative gave the Sovereign the sole right of printing all ordinances of the state, such as proclamations, Acts of Parliament, Orders in Council, and other state documents⁵. The principle on which the Sovereign enjoyed the prerogative was that such publications as relate to the government of the country should be published and preserved in a pure and correct state⁶.

Similarly, as the Sovereign is the head of the Church of England⁷ as well as of the state, it is her care to preserve the purity of the Scriptures, and the royal prerogative is exercised with regard to the printing of the Authorised Version of the Bible and the Book of Common Prayer⁸. The Hebrew Bible, the Greek Testament, and the Septuagint are within the public domain; and any person is entitled to print and publish these works without restriction⁹.

The royal prerogative has been exercised from time to time by the grant of letters patent from the Crown¹⁰, conferring on the patentees the sole right of printing Bibles, prayer books, Acts of Parliament, law books and judicial proceedings, and almanacs¹¹.

The right of printing conferred on the grantee under royal letters patent is apparently a licence to print and publish; and the grant does not amount to an assignment of the copyright which remains in the Crown¹².

1 See PARA 144 post.

2 See the Copyright, Designs and Patents Act 1988 s 171(1)(a), (b); and PARA 57 note 16 post. 'The Crown' includes the Crown in right of the Scottish Administration or of Her Majesty's Government in Northern Ireland or in any country outside the United Kingdom to which the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended) extends: s 178 (definition amended by the Scotland Act 1998 s 125, Sch 8 para 25(7)(a)). As to the Scottish Parliament and government in Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the countries to which the Copyright, Designs and Patents Act 1988 extends see PARA 444 post.

3 *Millar v Taylor* (1769) 4 Burr 2303 at 2401 per Lord Mansfield CJ. As to the prerogative which the Crown exercised in respect of printing and publishing before the creation of statutory copyright see PARA 17 post.

4 *A-G for New South Wales v Butterworth & Co (Australia) Ltd* (1938) 38 SRNSW 195.

5 Acts of Parliament and Measures of the General Synod of the Church of England are now Crown copyright by virtue of the Copyright, Designs and Patents Act 1988 s 164 (as amended): see PARA 148 post.

6 *Manners, Miller and Buchan v King's Printer* (1828) 2 State Tr NS 215 at 225, HL, per Lord Hermand; *Grierson v Eyre* (1804) 9 Ves 341.

7 See ECCLESIASTICAL LAW vol 14 PARA 352.

8 See *Grierson v Jackson* (1794) Ridg L & S 304. This prerogative is not referable to the circumstance of the Sovereign being in a spiritual or ecclesiastical sense the Supreme Governor of the Church of England (but not of the Church of Scotland), but to the Sovereign's being the head of the church and state, and it being the duty of the Sovereign to act as guardian and protector of both, a character which the Sovereign has equally in Scotland and England; it is, therefore, the Sovereign's duty to take care that such works are published in a correct and authentic form: *Manners, Miller and Buchan v King's Printer* (1828) 2 State Tr NS 215 at 236, HL, per Lord

Lyndhurst LC. It has never been decided that the prerogative extends to any translation of the Bible other than the Authorised Version: *Oxford and Cambridge Universities v Eyre and Spottiswoode Ltd* [1964] Ch 736 at 750, [1963] 3 All ER 289 at 293.

9 *Millar v Taylor* (1769) 4 Burr 2303.

10 Since the Restoration, in cases relating to the grant of letters patent under the royal prerogative, the claim of the patentee has been based on the right of property belonging to the Crown. As to Rolle's Abridgment it was said that the Year Books, having been compiled at the King's expense, were the King's property, and, therefore, the printing of them belonged to the King's patentee: *Stationers v Patentees about Printing of Roll's Abridgment* (1666) Cart 89, HL. In respect of Croke's Reports it was contended that the King paid the judges, who made the decisions, and the decisions were, therefore, his: *Roper v Streater* (1672) cited in Skin at 234. In modern times, however, the Crown has never claimed a prerogative right to the sole printing of judgments. An almanac, it was argued, had no certain author, and was the Sovereign's property: *Stationers' Corp v Seymour* (1677) 1 Mod Rep 256. The English translation of the Bible had been made at the King's expense and, therefore, it was concluded to be his property. For the same reason, it was thought that the Sovereign had property in the Latin Grammar. The whole right rested on the common law proprietary interest of the Crown by reason of the Sovereign's right of original publication: *Millar v Taylor* (1769) 4 Burr 2303 at 2402, 2405 per Lord Mansfield CJ; and see *Nicol v Stockdale* (1785) 3 Swan 687. See also the cases cited in note 11 infra.

11 *Oxford and Cambridge Universities v Richardson* (1802) 6 Ves 689 (Bible and prayer book); *Manners, Miller and Buchan v King's Printer* (1828) 2 State Tr NS 215 (Bible and prayer book); *Basket v Cambridge University* (1758) 1 Wm Bl 105 (grant to King's printer of all statutes, books, Acts and other volumes published by the King in English, the Latin Grammar excepted, and also Bibles, testaments and service books; concurrent authority to the University of Cambridge); *Baskett v Cunningham* (1762) 1 Wm Bl 370; *Re Red Letter New Testament (Authorised Version)* (1900) 17 TLR 1 (Bible); *Roper v Streater* (1672) cited in Skin at 234 (law reports); *Stationers v Patentees about Printing of Roll's Abridgment* (1666) Cart 89, HL (law reports). The sole right of printing almanacs was granted by royal letters patent, and their validity was upheld: *Stationers' Corp v Seymour* (1677) 1 Mod Rep 256; and see *Stationers' Companies Case* (1681) 2 Cas in Ch 66, HL. The prerogative right was, however, disputed in *Stationers' Co v Partridge* (1709) 10 Mod Rep 105, but no decision was given. In *Stationers' Co v Carnan* (1775) 2 Wm Bl 1004, it was held that there was no royal prerogative with regard to the publication of almanacs; and see *Millar v Taylor* (1769) 4 Burr 2303 at 2329; *Gurney v Longman* (1806) 13 Ves 508. The claim of the Crown to print the Latin Grammar, on the ground that the work was originally compiled at the Sovereign's expense, appears to have been abandoned: see *Stationers' Co v Partridge* supra; *Nicol v Stockdale* (1785) 3 Swan 687. Patentees cannot be authorised to print in breach of copyright: *Oxford and Cambridge Universities v Eyre and Spottiswoode Ltd* [1964] Ch 736, [1963] 3 All ER 289. As to the practice in relation to Crown copyright see PARA 149 post.

12 *Oxford and Cambridge Universities v Richardson* (1802) 6 Ves 689 at 712 per Lord Eldon LC. The King had power accordingly to grant the right of printing Acts of Parliament to the King's printer, and by similar letters patent to grant a concurrent authority to print the same to the University of Cambridge: *Basket v Cambridge University* (1758) 1 Wm Bl 105.

UPDATE

5 Prerogative rights

NOTE 2--'The Crown' also includes the Crown in the right of the Welsh Assembly Government: 1988 Act s 178 (amended by the Government of Wales Act 2006 Sch 10 para 29).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(i) Copyright/6. University copyright.

6. University copyright.

The universities of Oxford and Cambridge, the Universities of St Andrews, Glasgow, Aberdeen and Edinburgh, each college and house of learning at the universities of Oxford and Cambridge, Trinity College, Dublin, and the colleges of Eton, Westminster and Winchester are entitled to the exclusive right of printing all such books as have been bequeathed or given to them, or in trust for them, by the authors thereof, or by their representatives, provided that such bequest or gift took effect prior to 1 July 1912¹. This right lasts until 31 December 2039 unless it was given or bequeathed for a limited period².

This exclusive right endures only so long as the books or copies belonging to such universities or colleges are printed exclusively at their own printing presses, within their universities or colleges respectively, and for their sole benefit and advantage. If they delegate, grant, lease or sell their copyright or the exclusive right of printing, or any part thereof, or grant a licence to print any such works, the exclusive right of printing ceases; but any such dealing with their copyright will be valid in the same way as if made by any author³.

The provisions of the Copyright, Designs and Patents Act 1988 relating to acts permitted in relation to copyright works⁴, the remedies for infringement⁵, copyright licensing⁶ and the Copyright Tribunal⁷ apply to the university copyright as they apply to any other copyright⁸.

1 The right was conferred by the Copyright Act 1775 (repealed), and extended to Trinity College, Dublin, by 41 Geo 3 c 107 (Copyright) (1801) s 3 (repealed). The right was preserved by the Copyright Act 1842 s 27 (repealed), and any rights which were already existing at 1 July 1912 were preserved by the Copyright Act 1911 s 33 (repealed), and were further continued by the Copyright Act 1956 s 46(1) (repealed). The right remains enforceable by virtue of the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 13: see the text and notes 2, 4-8 *infra*.

2 See *ibid* Sch 1 para 13(1).

3 See the Copyright Act 1775 s 3 (repealed).

4 *Ie* the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended): see PARA 337 *et seq post*.

5 *Ie* *ibid* Pt I Ch VI (ss 96-115) (as amended): see PARA 311 *et seq post*.

6 *Ie* *ibid* Pt I Ch VII (ss 116-144) (as amended): see PARAS 182 *et seq*, 223 *et seq post*.

7 *Ie* *ibid* Pt I Ch VIII (ss 145-152) (as amended): see PARA 207 *et seq post*.

8 *Ibid* Sch 1 para 13(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(ii) Moral Rights/7. Moral rights.

(ii) Moral Rights

7. Moral rights.

Moral rights¹ include the right of an author or a film director to assert his right to be identified as the author of his work ('the right of paternity'), the right to object to derogatory treatment of a work or film ('the right of integrity'), the right not to have a work falsely attributed to a person (the 'false attribution right') and the right to privacy of certain photographs and films. Apart from the false attribution right, these moral rights were first accorded statutory protection by the Copyright, Designs and Patents Act 1988.

Two new moral rights for performers of qualifying performances have been created: the right to be identified as the performer and the right to object to derogatory treatment².

1 I.e. the rights conferred by the Copyright, Designs and Patents Act 1988 Pt I Ch IV (ss 77-89) (as amended): see PARA 455 et seq post.

2 See ibid ss 205C-205N (as added); and PARA 722 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(iii) Rights relating to Protection Measures/8. Circumvention of protection measures.

(iii) Rights relating to Protection Measures

8. Circumvention of protection measures.

Modern technology has enabled works to be copied simply, cheaply and on a large scale. To prevent this, copy-protection measures have been developed for the protection of computer programs and other copyright works, and broadcast programmes can be sent encrypted for decoding by authorised recipients only. Such protection can, however, be circumvented.

The Copyright, Designs and Patents Act 1988 gives persons issuing to the public copies of, or communicating to the public, works protected by copy-protection measures rights, similar to those of a copyright owner, against persons who seek to circumvent such measures¹. Provision is also made in relation to the removal or alteration of electronic rights information².

Certain rights and remedies are given to persons who make charges for the reception of broadcast programmes, send encrypted transmissions or provide conditional access to such services³; and it is a criminal offence fraudulently to receive a programme included in a broadcasting service with intent to avoid paying any charge applicable to its reception⁴ or to deal in unauthorised decoders⁵.

¹ See the Copyright, Designs and Patents Act 1988 s 296 (as substituted), ss 296ZA-296ZF (as added); and PARA 485 et seq post.

² See *ibid* s 296ZG (as added); and PARA 490 post.

³ See *ibid* s 298 (as amended); and PARA 495 post.

⁴ See *ibid* s 297 (as amended); and PARA 491 post.

⁵ See *ibid* s 297A (as added and amended); and PARA 492 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(iv) Publication Right/9. Publication right.

(iv) Publication Right

9. Publication right.

Any person who after the expiry of copyright protection¹ publishes² for the first time a previously unpublished work³ has a property right, known as publication right, equivalent to copyright⁴. This right was conferred for the first time by the Copyright and Related Rights Regulations 1996⁵.

1 As to duration of copyright see PARA 93 et seq post.

2 For the meaning of 'publish' for these purposes see PARA 497 post.

3 I.e. a literary, dramatic, musical or artistic work or a film.

4 See the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(1); and PARA 497 post.

5 See *ibid* reg 16 (as amended), reg 17; and PARA 497 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(v) Design Right/10. Design right.

(v) Design Right

10. Design right.

Design right¹ is a property right which subsists in an original design². It is a right which comes into existence when a qualifying design³ is recorded in a document or embodied in an article. There is no requirement for registration. It is sometimes referred to as the 'unregistered design right' in contrast to the right conferred by the Registered Designs Act 1949 on registered designs⁴. It is a right to prevent unauthorised reproduction of the design and it does not confer a monopoly as does the registration of a design as a registered design. Design right was created for the first time by the Copyright, Designs and Patents Act 1988 and it substantially replaces⁵ the protection conferred by the copyright in artistic works against copying such works in three-dimensional form⁶.

1 I.e. the right conferred by the Copyright, Designs and Patents Act 1988 Pt III (ss 213-264) (as amended): see PARA 501 et seq post.

2 See *ibid* s 213(1); and PARA 501 post. For the meaning of 'design' see PARA 505 post. As to the requirement of originality see PARA 506 post.

3 As to which designs qualify for design right protection see PARA 510 et seq post.

4 As to registered designs see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 681 et seq.

5 I.e. subject to certain transitional provisions: see the Copyright, Designs and Patents Act 1988 s 170, Sch 1 paras 19, 20; and PARAS 204, 377, 379 post.

6 As to such copyright protection see PARA 314 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(vi) Rights in Performances/11. Rights in performances.

(vi) Rights in Performances

11. Rights in performances.

There is no copyright in the performance of a work as distinct from the work itself, but performers are protected by both civil and criminal law against the unauthorised recording, filming and broadcasting of their performances and have both property and non-property rights in their performances¹. Performers of qualifying performances also have moral rights, being the right to be identified as the performer and the right to object to derogatory treatment². In addition, persons having recording rights in relation to a performance are also protected against unauthorised acts³.

1 See the Copyright, Designs and Patents Act 1988 Pt II (ss 180-212) (as amended); and PARA 604 et seq post.

2 See *ibid* ss 205C-205N (as added); and PARA 722 et seq post. Sections 205C-205N were added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, implementing the requirements of the World Intellectual Property Organisation Performances and Phonograms Treaty (Geneva 20 December 1996; Cm 3728).

3 See the Copyright, Designs and Patents Act 1988 ss 185-188 (as amended); and PARA 620 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(vii) Artists Resale Rights/12. Artists resale rights.

(vii) Artists Resale Rights

12. Artists resale rights.

The author of a work of art in which copyright subsists, has a right (a 'resale right') to a royalty (a 'resale royalty') on any resale of the work subsequent to the first transfer of ownership by the author, for the period until copyright in the work expires¹. This right was introduced by the Artists Resale Rights Regulations 2006² implementing the European Directive on the resale right for the benefit of the author of an original work of art³.

1 See the Artist's Resale Right Regulations 2006, SI 2006/346, reg 3(1), (2); and PARA 775 post.

2 Ie the Artist's Resale Right Regulations 2006, SI 2006/346: see PARA 774 et seq post.

3 Ie EC Parliament and Council Directive 2001/84 (OJ L272, 27.9.2001, p 32).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(viii) Cognate Rights/13. Breach of confidential relations.

(viii) Cognate Rights

13. Breach of confidential relations.

Although communications of the contents of works may not constitute infringement of copyright¹, they are nevertheless in certain circumstances capable of being restrained at the suit of the author²; and the right to restrain a breach of confidential relations is expressly preserved by the Copyright, Designs and Patents Act 1988³. For example, it is actionable to communicate information in breach of an agreement not to do so, and such an agreement may be express or may be implied from the fact that the person on whom it is alleged to be binding is or was in the employment of the claimant⁴ or in some other confidential relationship with him⁵. Breach of confidence is not confined to cases of contractual relationship⁶.

Furthermore, any person who, knowing of the obligation not to communicate the information, obtains such information from the person on whom the obligation rests may also be restrained by injunction from communicating it to any other person⁷.

A claimant may be required to elect whether to claim damages for breach of confidence or for infringement of copyright⁸.

1 See PARA 4 ante. As to the acts restricted by copyright see PARA 311 et seq post.

2 As to injunctions to restrain disclosure of confidential information generally see CIVIL PROCEDURE vol 11 (2009) PARAS 475-476.

3 See the Copyright, Designs and Patents Act 1988 s 171(1)(e), by virtue of which nothing in that Act affects the operation of any rule of equity relating to breaches of trust or confidence; and PARA 57 note 16 post.

4 *Robb v Green* [1895] 2 QB 315, CA (employee restrained from copying lists); *Lamb v Evans* [1893] 1 Ch 218, CA (former employees restrained from using information acquired in course of employment); *Amber Size and Chemical Co Ltd v Menzel* [1913] 2 Ch 239 (former servant restrained from disclosing secret process); *Lord Ashburton v Pape* [1913] 2 Ch 469, CA (use of letters in legal proceedings restrained on ground that they had been obtained by a trick from the claimant's solicitor); *Prince Albert v Strange* (1849) 1 Mac & G 25 (publication of private prints obtained surreptitiously from printers' assistant restrained); *Webb v Rose* (1732) cited in 4 Burr 2330 (clerk restrained from printing conveyancer's draft); *Gilbert v Star Newspaper Co Ltd* (1894) 11 TLR 4 (publication of plot of a forthcoming play restrained on the ground that the information could only have been obtained from some employee of the claimant); *Louis v Smellie* (1895) 73 LT 226, CA (former servant restrained from using lists taken from employer's books); *Stevenson, Jordan and Harrison Ltd v MacDonald and Evans* [1952] 1 TLR 101, CA (employee not restrained from publishing an account of the know-how of a trade learned during his employment); *Canada Bonded Attorney and Legal Directory Ltd v Leonard-Parmiter Ltd* (1918) 42 OLR 141; *Lion Laboratories Ltd v Evans* [1985] QB 526, [1984] 2 All ER 417, CA (employee not restrained from disclosing information about allegedly faulty breathalysers); *A-G v Observer Ltd, A-G v Times Newspapers Ltd* [1990] 1 AC 109 at 233, sub nom *A-G v Guardian Newspapers Ltd (No 2)* [1988] 3 All ER 545 at 638, HL (newspapers not restrained from publishing extracts from memoirs of ex-MI5 member because information had already been placed in the public domain by his breach of confidence).

5 *Exchange Telegraph Co Ltd v Gregory & Co* [1896] 1 QB 147, CA; *Exchange Telegraph Co Ltd v Central News Ltd* [1897] 2 Ch 48; *Exchange Telegraph Co Ltd v Howard and London and Manchester Press Agency Ltd* (1906) 22 TLR 375; *London and Provincial Sporting News Agency Ltd v Levy* (1928) MacG Cop Cas (1923-28) 340; *McNichol v Sportsman's Book Stores* (1930) MacG Cop Cas (1928-30) 116 (cases where persons were restrained from making public information obtained from subscribers to news agencies whose agreement with their subscribers provided that they were not to publish the information issued); *Abernethy v Hutchinson* (1825) 1 H & Tw 28; *Caird v Sime* (1887) 12 App Cas 326, HL; *Nicols v Pitman* (1884) 26 ChD 374 (students not entitled to publish notes of lectures which they have attended); *Palin v Gathercole* (1844) 1 Coll 565 (receiver of a letter not entitled to publish information contained in it; but see *Labouchère v Hess* (1897) 77 LT 559 and *Philip v*

Pennell [1907] 2 Ch 577); *Pollard v Photographic Co* (1888) 40 ChD 345 (photographer restrained from selling copies of a negative of a picture he had taken for money); *Nichrotherm Electrical Co Ltd v Percy* [1957] RPC 207, CA (disclosure of production drawings by manufacturing company and selling agent); *Brian D Collins (Engineers) Ltd v Roberts & Co Ltd* [1965] RPC 429 (use of drawings after manufacturing contract had been terminated); *Seager v Copydex Ltd* [1967] 2 All ER 415, [1967] 1 WLR 923, CA (use of unpatented invention disclosed in abortive negotiations).

6 *Saltman Engineering Co Ltd v Campbell Engineering Co Ltd* (1948) 65 RPC 203 at 211, CA, per Lord Greene; *Peter Pan Manufacturing Corp v Corsets Silhouette Ltd* [1963] 3 All ER 402, [1964] 1 WLR 96 (information given by one manufacturer to another); *Duchess of Argyll v Duke of Argyll* [1967] Ch 302, [1965] 1 All ER 611 (matrimonial confidences); *Nichrotherm Electrical Co Ltd v Percy* [1957] RPC 207, CA (disclosure of production drawings by manufacturing company and selling agent); *Hubbard v Vosper* [1972] 2 QB 84, [1972] 1 All ER 1023, CA (ex-member of the Church of Scientology); *Fraser v Thames Television Ltd* [1984] QB 44, [1983] 2 All ER 101 (idea for television series communicated to television company); *Ashmore v Douglas-Home* (1982) [1987] FSR 553 (ideas for a play).

7 *Exchange Telegraph Co Ltd v Gregory & Co* [1896] 1 QB 147, CA; *Exchange Telegraph Co Ltd v Central News Ltd* [1897] 2 Ch 48; *McNichol v Sportsman's Book Stores* (1930) MacG Cop Cas (1928-30) 116; *Tillett v Cosmopolitan Press Ltd* (1932) MacG Cop Cas (1928-35) 331; *Prince Albert v Strange* (1849) 1 Mac & G 25; *Abernethy v Hutchinson* (1825) 1 H & Tw 28. See also *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch), [2006] All ER (D) 276 (Mar). No claim will lie against an innocent person who uses information improperly obtained without knowing of its improper source: *Cooksley v Johnson & Sons* (1905) 25 NZLR 834, NZ CA. See further CIVIL PROCEDURE vol 11 (2009) PARAS 475-476.

8 *Nichrotherm Electrical Co Ltd v Percy* [1957] RPC 207 at 214, CA, per Lord Evershed MR.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(2) THE RIGHTS PROTECTED/(viii) Cognate Rights/14. Passing off.

14. Passing off.

Apart from statute¹, a claim will lie for the passing off² of a work as the work of the claimant, if its title or appearance is such as to lead the public to believe that they are purchasing, or using³, a work of the claimant⁴ and injury is likely to accrue to the claimant⁵; it is not necessary to show an intention to deceive⁶. Such a claim may be brought by publishers who have acquired the copyright in a work from the author to restrain a publication of a similar work using the author's name so as to induce the public to believe it was the same as the original work⁷. The publication of an earlier edition of a work so as to represent that it is the latest work of the author may be restrained⁸. An author may on the same ground be able to restrain an unauthorised user of a nom-de-plume under which he writes⁹. Prima facie a nom-de-plume is the property of the author¹⁰. The owner of the copyright in a dramatic sketch may maintain a claim for passing off against the producer of a film for representing to the public, contrary to the fact, that his film is a film version of the sketch, notwithstanding that there is no existing film of the sketch, for the court will always intervene by injunction to restrain irreparable injury to the claimant's property¹¹.

1 As to the statutory right of action for false attributions of authorship see PARA 471 et seq post.

2 As to claims for passing off see TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 304 et seq. The classic statement as to the law of passing off is set out in *Reckitt & Colman Products Ltd v Borden Inc* [1990] 1 All ER 873 at 880, [1990] 1 WLR 491 at 499, [1990] RPC 341 at 406, HL, per Lord Oliver of Aylmerton, and at 889, 510, 417 per Lord Jauncey of Tullichettle. See also *Erven Warninck BV v J Townsend & Sons (Hull) Ltd* [1979] AC 731, [1979] 2 All ER 927, [1980] RPC 31, HL.

3 *Illustrated Newspapers Ltd v Publicity Services (London) Ltd* [1938] Ch 414, [1938] 1 All ER 321 (illustrated paper exhibited for use of customers with advertisements inserted not originating from claimant).

4 *Bradbury v Beeton* (1869) 39 LJ Ch 57; *Lord Byron v Johnston* (1816) 2 Mer 29; *Chappell v Sheard* (1855) 2 K & J 117; *Chappell v Davidson* (1855) 2 K & J 123; *Hogg v Kirby* (1803) 8 Ves 215; *Clowes v Hogg* [1870] WN 268; *Corns v Griffiths* [1873] WN 93; *Broadhurst v Nichols* (1903) 3 SRNSW 147; *Meynell v Pearce* [1906] VLR 447; *Portway Press Ltd v Hague* [1957] RPC 426. If the title is an ordinary sentence or expression which has not yet acquired a secondary meaning in connection with the claimant, no claim will lie (*Mathieson v Sir Isaac Pitman & Sons* (1930) 47 RPC 541; *Houghton v Film Booking Offices Ltd* (1931) 48 RPC 329); and it must be shown that members of the public are, or are likely to be, deceived (*Kelly v Byles* (1880) 13 ChD 682, CA).

5 *Borthwick v The Evening Post* (1888) 37 ChD 449, CA (newspaper complained of to be published at a place sufficiently distant to remove risk of confusion). The amount of damage need not be capable of assessment: *Ridge v English Illustrated Magazine Ltd* (1913) 29 TLR 592.

6 *Clement v Maddick* (1859) 1 Giff 98.

7 *Metzler v Wood* (1878) 8 ChD 606, CA.

8 *Harris v Warren and Phillips* (1918) 87 LJ Ch 491. It must be capable of being established that the old and new works fall into two distinct classes or that the old work has been so altered as not really to be the claimant's work at all: *Harris v Warren and Phillips* supra; and see *Archbold v Sweet* (1832) 5 C & P 219.

9 *Maitland-Davison v The Sphere and Tatler Ltd* (1919) MacG Cop Cas (1917-23) 128; *Hines v Winnick* [1947] Ch 708, [1947] 2 All ER 517; *Marengo v Daily Sketch and Sunday Graphic Ltd* [1948] 1 All ER 406, HL.

10 *Landa v Greenberg* (1908) 24 TLR 441; *Forbes v Kemsley Newspapers Ltd* [1951] 2 TLR 656; *Modern Fiction Ltd v Fawcett* (1949) MacG Cop Cas (1948-49) 22.

11 *Samuelson v Producers' Distributing Co Ltd* [1932] 1 Ch 201, CA; cf *O'Gorman v Paramount Film Service Ltd* [1937] 2 All ER 113 (where there was no resemblance between the substance of a film (bearing the same name as that of the claimant's play) and the claimant's play, which was not likely to be filmed; and an injunction to restrain the film from being shown under the same name as that of the play was refused).

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15. Deposit libraries.

The publisher of a qualifying work¹ in the United Kingdom² must, at his own expense, deliver a copy of it to any deposit library³ entitled to delivery⁴. The British Library Board is entitled to delivery of a copy of every work published in print⁵, and each other deposit library is entitled to delivery of a copy of any such work which it requests⁶. Regulations may be made regarding non-print publications⁷. Where a publisher fails to comply with his obligation to deliver copies to a deposit library, the library may apply to the county court for an order requiring the publisher to so comply⁸.

1 The Legal Deposit Libraries Act 2003 applies, in the case of a work published in print, to a book (including a pamphlet, magazine or newspaper); a sheet of letterpress or music; a map, plan, chart or table; and a part of any such work (s 1(3)); and, in the case of a work published in a medium other than print, it applies to a work of a type prescribed by regulations (s 1(4)). As to the Legal Deposit Libraries Act 2003 generally and regulations made thereunder see NATIONAL CULTURAL HERITAGE.

2 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

3 'Deposit library' means any of the British Library Board and the authorities controlling the National Library of Scotland, the National Library of Wales, the Bodleian Library, Oxford, the University Library, Cambridge, and the Library of Trinity College, Dublin: Legal Deposit Libraries Act 2003 s 14. As to the British Library see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 906 et seq.

4 See *ibid* s 1(1).

5 See *ibid* s 4.

6 See *ibid* s 5.

7 See *ibid* s 6. At the date at which this volume states the law no such regulations had been made.

8 See *ibid* s 3.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(i) Continuing Significance of Former Law/16. Circumstances in which former law relevant.

(3) EVOLUTION OF COPYRIGHT LAW

(i) Continuing Significance of Former Law

16. Circumstances in which former law relevant.

With certain exceptions¹, earlier legislation, including the previous principal Act relating to copyright, the Copyright Act 1956, was repealed by the Copyright, Designs and Patents Act 1988², by virtue of which all copyright now subsists³.

In general, the provisions of the Copyright, Designs and Patents Act 1988⁴ apply in relation to things existing on 1 August 1989⁵ as they apply in relation to things coming into existence on or after that date, subject to any express provision to the contrary⁶. Copyright subsists in a work made before 1 August 1989⁷ on or after that date only if copyright subsisted in it immediately before that date⁸. This must be ascertained by reference to the provisions of the Copyright Act 1956 for works created on or after 1 June 1957⁹ and to the transitional provisions of that Act for works created before that date¹⁰. Where a work was created before 1 July 1912¹¹, it may in some cases be necessary to refer to the law as it existed before that date and to the provisions of the Copyright Act 1911 because, subject to certain special provisions as to the effect of assignment and licences¹², a person became entitled under the Copyright Act 1911 to copyright only if he was entitled to copyright under the previously existing law¹³. In view of the differences between the periods of copyright before and after the Copyright Act 1911¹⁴, it may be necessary to ascertain whether the period previously applicable had expired before that Act came into force, even though the period applicable under that Act and under the Copyright Act 1956 may not have expired¹⁵.

The purpose of the transitional provisions of the Copyright, Designs and Patents Act 1988¹⁶ is to secure the continuity of the law so far as its provisions re-enact, with or without modification, earlier provisions¹⁷. The general scheme of those transitional provisions is, subject to any specific transitional provision or saving and to any express amendment made by the Copyright, Designs and Patents Act 1988¹⁸, to preserve the provisions relating to subsistence of copyright and nature of the works protected, as they existed under the earlier legislation so that, for example, the copyright regime for works made between 1 June 1957 and 31 July 1989 inclusive is substantially equivalent to that under the Copyright Act 1956 and that for works made between 1 July 1912 and 31 May 1957 inclusive is substantially equivalent to that under the Copyright Act 1911. In particular, the question who was an author of a work made before 1 August 1989¹⁹ and who was first owner of the copyright therein is determined according to the law in force at the time the work was made²⁰.

1 See PARA 54 post.

2 See the Copyright, Designs and Patents Act 1988 s 303(2), Sch 8.

3 See *ibid* s 171(2); and PARA 57 post.

4 *ie* the provisions of *ibid* Pt I (ss 1-179) (as amended), including Sch 1, and Schs 3, 7 and 8 in so far as they make amendments or repeals consequential on the provisions of Pt I (as amended) ('the new copyright provisions'): see s 170, Sch 1 para 1(1).

In relation to the Copyright Act 1956 (repealed), references in the Copyright, Designs and Patents Act 1988 Sch 1 to a work include any work or other subject matter within the meaning of the Copyright Act 1956: Copyright, Designs and Patents Act 1988 Sch 1 para 2(1). In relation to the Copyright Act 1911: (1) references in the Copyright, Designs and Patents Act 1988 Sch 1 to copyright include the right conferred by the Copyright Act 1911 s 24 (repealed) in substitution for a right subsisting immediately before 1 July 1912; (2) references in the Copyright, Designs and Patents Act 1988 Sch 1 to copyright in a sound recording are references to the copyright under the Copyright Act 1911 in records embodying the recording; and (3) references in the Copyright, Designs and Patents Act 1988 Sch 1 to copyright in a film are references to any copyright under the Copyright Act 1911 in the film, so far as it constituted a dramatic work for the purposes of that Act, or in photographs forming part of the film: Copyright, Designs and Patents Act 1988 Sch 1 para 2(2).

5 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 post.

6 Ibid Sch 1 para 3.

7 In ibid Sch 1 works made before 1 August 1989 are referred to as 'existing works': Sch 1 para 1(3). For these purposes, a work of which the making extended over a period is to be taken to have been made when its making was completed: Sch 1 para 1(3).

8 Ibid Sch 1 para 5(1).

9 Ie the date on which the Copyright Act 1956 (repealed) came into force in the United Kingdom: see PARA 35 post.

10 Ie the provisions of ibid s 50, Schs 7, 8 (repealed): see PARA 36 post.

11 Ie the date on which the Copyright Act 1911 came into force in the United Kingdom: see PARA 30 post.

12 See PARA 173 note 8 post.

13 See the Copyright Act 1911 s 24 (repealed); and PARAS 29-31 post.

14 As to the periods applicable before the Copyright Act 1911 came into force see PARAS 17-18 post; as to duration of copyright under the Copyright Act 1911 see PARA 29 post; and as to duration of copyright under the Copyright Act 1956 (repealed) see PARA 47 et seq post.

15 See PARA 29 note 3 post.

16 Ie the provisions of the Copyright, Designs and Patents Act 1988 Sch 1.

17 Ibid Sch 1 para 4(1); and see PARA 55 post.

18 Ibid Sch 1 para 4(6). As to specific transitional provisions or savings and express amendments see Sch 1 paras 5-46. See also PARA 55 post.

19 Ibid Sch 1 para 10. However, for the purposes of the moral rights conferred by Pt I Ch IV (ss 77-89) (as amended) (see PARA 455 et seq post) the provisions of the Copyright, Designs and Patents Act 1988 apply to determine the question who was an author of a work made before 1 August 1989: see Sch 1 para 10.

20 Ibid Sch 1 para 11(1). In general, the author is the first owner of the copyright, except where the author is employed and produces the work in the course of his employment. Under earlier legislation the copyright in certain works could, however, belong to the commissioner; and there were special provisions for the works of journalist employees: see PARA 123 et seq post.

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(ii) Law before 1 July 1912

A. COMMON LAW AND EARLY STATUTES

17. Literary works; in general.

The common law consistently protected an author's right of first printing and publishing his own works¹. It is uncertain to what extent the protection of unpublished works may be attributed to the recognition of a copyright as distinct from equitable doctrines relating to breach of trust and confidence². From the wording of early ordinances and legislation, it appears that ownership of something akin to modern copyright was recognised, although little protection was afforded to it. Until the abolition of the Star Chamber in 1640 the Crown exercised an unlimited authority over printing³. As a response to problems arising from the abolition of the Star Chamber⁴ the first licensing Act⁵ was passed in 1662 but it expired in 1694⁶. The first Act expressly to confer copyright protection for literary work was the Copyright Act 1709, which preserved copyright for a term of years⁷. It was initially thought that the common law right in published works co-existed with the statutory right, but it was finally decided that the former merged with the latter⁸. The universities later took steps to have their common law rights protected⁹. The Copyright Act 1814 varied the term of years for literary copyright to 28 years from the date of first publication or the life of the author, whichever was longer¹⁰. Protection for authors of literary works which approached that given by modern law was conferred by the Copyright Act 1842¹¹, which, with minor amendments, continued in force until the passing of the Copyright Act 1911¹².

1 See eg *Donaldson v Beckett* (1774) 4 Burr 2408, HL.

2 As to breach of confidence see PARA 13 ante.

3 This control was enforced by summary powers of search, confiscation and imprisonment given to the Stationers' Company and by the supreme jurisdiction of the Star Chamber which issued decrees regulating printing and the number of presses: *Millar v Taylor* (1769) 4 Burr 2303 at 2312. All printing was forbidden except by royal licence which was conferred by proclamation, charter, decrees or by the grant of letters patent from the Crown. The Star Chamber considered all infringements of royal letters patent as contempt of the royal authority, and on that theory supported any patent which the Crown thought proper to grant. The Statute of Monopolies (1623) was intended to check this mischief, directing that all grants of monopolies should be tried and determined according to the common law, but a proviso enacted that the statute did not extend to any letters patent or grants of privilege concerning printing: see s 10 (repealed). The Star Chamber, therefore, continued the same powers of enforcing obedience in punishing contempts: *Millar v Taylor* supra at 2375.

4 On the abolition of the Star Chamber all regulations of the press and restraint of unlicensed printing by proclamation, decrees of the Star Chamber and charter powers given to the Stationers' Company were deemed to be illegal: *Millar v Taylor* (1769) 4 Burr 2303 at 2314.

5 ie 14 Car 2 c 33 (Licensing of the Press) (1662). That Act expired in 1679; it was revived by 1 Jac 2 c 17 (1685) s 15 (repealed), and by 4 Will & Mar c 24 (1692) s 14 (repealed); but it finally expired in 1694 (see *Millar v Taylor* (1769) 4 Burr 2303 at 2317), and it was repealed by the Statute Law Revision Act 1863.

6 See note 5 supra.

7 The term varied. Books in print on 10 April 1710 were protected for 21 years and books not at that date in print were protected for 14 years, with a further 14 years' protection in favour of the author if he was still living at the end of the first 14 years: see the Copyright Act 1709 ss 1, 11 (repealed).

8 *Donaldson v Beckett* (1774) 4 Burr 2408, HL. The common law right in unpublished works was unaffected. As to such right see PARA 20 post.

9 See the Copyright Act 1775 (repealed); and PARA 6 ante.

10 See the Copyright Act 1814 s 4 (repealed).

11 The period of copyright was in general the life of the author and seven years after his death, or 42 years, whichever was the longer: see the Copyright Act 1842 s 3 (repealed). As to copyright under that Act see further PARA 21 post; and as to the duration of copyright in literary etc works under the present law see PARA 66 et seq post.

12 As to the Copyright Act 1911 see PARA 28 et seq post.

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18. Other works and performers' protection.

Copyright in engravings, prints and lithographs was recognised in 1734¹, and copyright in sculpture was recognised in 1814². This protection was extended in 1862 to paintings, drawings and photographs³. Copyright in dramatic and musical works, as publications, was first recognised in the eighteenth century⁴, and was subsequently recognised by statute⁵. Such works, if unpublished, enjoyed the ordinary common law protection of unpublished manuscripts⁶. The author's interest in the performance was not recognised until the Dramatic Copyright Act 1833. The protection⁷ afforded by that Act applied only to dramatic works. Performing right, as this interest was called, was extended to musical works by the Copyright Act 1842, which fixed the period of protection, both for dramatic and musical works, at the same period as the duration of the copyright in the published work itself⁸. A number of subsequent Acts⁹ dealt with problems arising from the existence of the right. Protection for lecturers was conferred by the Lecturers' Copyright Act 1835¹⁰.

1 See the Engraving Copyright Act 1734 (repealed); the Engraving Copyright Act 1766 ss 1, 2 (repealed) (by which the term of the copyright was 28 years from the publication of the work); the Prints Copyright Act 1777 (repealed); and the International Copyright Act 1852 s 12 (repealed) (extending the protection to lithographs). See further PARA 25 post.

2 See the Sculpture Copyright Act 1814 (repealed). The term of the copyright was 14 years from publication of the work and a further 14 years if the author was still living at the end of the first 14 years: see ss 2, 6 (repealed). See also PARAS 25-26 post.

3 See the Fine Arts Copyright Act 1862 (repealed). The general term of the copyright was the life of the author and seven years subject to special provisions relating to commissioned works and the effect of dispositions: see s 1 (repealed). See further PARAS 25-26 post.

4 *Bach v Longman* (1777) 2 Cowp 623; *Storace v Longman* (1788) 2 Camp 27n.

5 See PARA 23 post.

6 See PARAS 17 ante, 20 post.

7 The protection was for 28 years or the author's life, whichever was longer: see the Dramatic Copyright Act 1833 s 1 (repealed).

8 The period of 42 years began on the date of the first public performance of the work: see the Copyright Act 1842 s 20 (repealed); and PARA 17 note 11 ante.

9 See the Copyright (Musical Compositions) Act 1882 (repealed); the Copyright (Musical Compositions) Act 1888 (repealed); and the Musical (Summary Proceedings) Act 1902; the Musical Copyright Act 1906 (repealed). As to the necessity of a notice reserving performing right see PARA 23 post; and as to the registration and assignment of performing right under the Copyright Act 1842 (repealed) see PARA 24 post.

10 Lectures publicly delivered were protected, provided that the author gave two days' notice in writing to two magistrates living within five miles of the intended place of delivery: see the Lectures Copyright Act 1835 ss 1, 5 (repealed). Public delivery amounted to publication: *Walter v Lane* [1900] AC 539, HL.

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19. International copyright protection.

From the early sixteenth century international dealings in works on which copyright has been conferred have given impetus to domestic legislation. The first Act relating to international copyright was passed in 1844¹. The Berne Convention on international copyright² in 1885 resulted in the passing of further legislation³, which gave effect to the agreement reached as to the protection of authors in the countries which were party to the Convention. The Berlin revision of the Berne Convention in 1908⁴ necessitated the reform and clarification of British copyright law, and led to the enactment of the Copyright Act 1911⁵. The modern law relating to international copyright is dealt with elsewhere in this title⁶.

1 See the International Copyright Act 1844 (repealed). See also the International Copyright Act 1852 (repealed); the Fine Arts Copyright Act 1862 s 12 (repealed); and the International Copyright Act 1875 (repealed).

2 See PARA 452 post.

3 Ie the International Copyright Act 1886 (repealed).

4 See PARA 452 post.

5 As to the law under the Copyright Act 1911 see PARAS 28-34 post. As to the repeal and replacement of the Copyright Act 1911 see PARA 35 post.

6 See PARA 452 et seq post.

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B. PARTICULAR WORKS

20. Unpublished literary works.

Before 1 July 1912¹ there was no statutory copyright in unpublished literary works², but the author of any unpublished composition of a literary character, or his assignee, had at common law a proprietary right or interest in it³, which included the right of withholding publication or of restraining others from publishing, and the right of acquiring by publication a statutory right⁴. The common law proprietary right extended to every literary composition, whether large or small⁵. The statutory copyright in every literary work published after the death of its author vested in the proprietor of the author's manuscript from which the work was first published and his assigns⁶. The common law right did not pass under a bequest of the manuscript, but, in the absence of a specific gift, formed part of the author's residuary estate, and was, on 1 July 1912, converted into the statutory copyright subsisting under the Copyright Act 1911⁷.

1 le the date on which the Copyright Act 1911 came into force in the United Kingdom: see PARA 30 post.

2 See PARA 17 ante.

3 *Caird v Sime* (1887) 12 App Cas 326 at 337, HL, per Lord Halsbury LC, and at 344 per Lord Watson; *Mansell v Valley Printing Co* [1908] 2 Ch 441, CA; *Exchange Telegraph Co v Gregory & Co* [1896] 1 QB 147, CA; *Exchange Telegraph Co Ltd v Central News Ltd* [1897] 2 Ch 48; *Kenrick v Danube Collieries and Minerals Co* (1891) 39 WR 473; *Exchange Telegraph Co Ltd v Howard and London and Manchester Press Agency* (1906) 22 TLR 375; *Prince Albert v Strange* (1849) 1 Mac & G 25; *Gilbert v Star Newspaper Co* (1894) 11 TLR 4.

4 *Donaldson v Beckett* (1774) 4 Burr 2408, HL; *Jefferys v Boosey* (1854) 4 HL Cas 815.

5 *White v Geroch* (1819) 2 B & Ald 298 at 300 per Abbott CJ.

6 See the Copyright Act 1842 s 3 (repealed); and *Macmillan & Co v Dent* [1907] 1 Ch 107, CA.

7 *Re Dickens, Dickens v Hawksley* [1935] Ch 267 at 304-307, CA. See also PARA 31 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(ii) Law before 1 July 1912/B. PARTICULAR WORKS/21. Published literary works.

21. Published literary works.

Copyright was conferred by the Copyright Act 1842 for the statutory period¹ on the author of any book² published during his lifetime³. A literary composition was published by being printed and sold, or gratuitously distributed to the public, or exposed for sale⁴; by oral delivery to a public audience, in the form of a lecture, sermon, or speech⁵; and, in the case of a dramatic piece or musical composition, by public performance⁶. The issue of a document in printed form for private circulation was, however, not publication⁷; nor was the delivery of a lecture by a professor to his pupils⁸.

Books were not protected unless first published in the United Kingdom, or any British possession⁹, or in one of the foreign countries of the union constituted by the Berne Convention 1885¹⁰.

A periodical work, such as a newspaper, review magazine, encyclopaedia, or work published in a series of books or parts, was protected as a book¹¹.

The publisher¹² of any periodical work or other book¹³ who employed a person to write any article, story, or other literary composition for publication in the work or book, and who had paid him for it was entitled to the copyright as if he were the author, provided that there was no express term in the agreement to the contrary, and no special circumstances from which such a term might be reasonably inferred¹⁴.

1 See PARA 17 note 11 ante.

2 For the meaning of 'book' see the Copyright Act 1842 s 2 (repealed).

3 See *ibid* s 3 (repealed).

4 *Boucicault v Chatterton* (1876) 5 ChD 267 at 275, CA, per James LJ (printed and issued to the public); *McFarlane v Hulton* [1899] 1 Ch 884 at 889 per Cozens-Hardy J (offered for sale); *Blanchett v Ingram* (1887) 3 TLR 687 (gratuitous distribution).

5 Cf PARA 18 note 10 ante.

6 See the Copyright Act 1842 s 20 (repealed); *Boucicault v Delafield* (1863) 1 Hem & M 597.

7 *Jefferys v Boosey* (1854) 4 HL Cas 815 at 962; *Kenrick v Danube Collieries and Minerals Co Ltd* (1891) 39 WR 473; *Prince Albert v Strange* (1849) 2 De G & Sm 652 (affd 1 Mac & G 25).

8 *Caird v Sime* (1887) 12 App Cas 326, HL.

9 See the International Copyright Act 1886 s 8 (repealed). For the meaning of 'British possession' see s 11 (repealed). It was held in Canada that the Copyright Act 1842 (repealed) extended and was enforceable throughout the British dominions: see *Smiles v Bedford* (1877) 1 AR 436; *Imperial Book Co v Black & Co Ltd* (1904) 8 OLR 9 (affd (1905) 35 SCR 488); *Joubert v Geracimo* (1916) QR 26 KB 97. The Fine Arts Copyright Act 1862 (repealed), however, had no effect outside the United Kingdom: see *Graves & Co Ltd v Gorrie* [1903] AC 496, PC.

10 See the International Copyright Act 1844 s 19 (repealed); *Boucicault v Chatterton* (1876) 5 ChD 267, CA (no copyright in a dramatic work published abroad by a foreign representative). Certain foreign authors in respect of their unpublished works, and the owners of works first published in certain foreign countries, were entitled to be protected as though they were British subjects or their works had been first published in England. This protection was brought about by Orders in Council made under the provisions of the International Copyright Act 1886 (repealed), making the International Convention for the Protection of Literary and Artistic

Works (Berne, 9 September 1886; 77 BFSP 22; Cm 1212), as amended by the Additional Act (Paris, 4 May 1896; TS 14 (1896); C 8681) (see PARA 452 post), operative throughout the British dominions. As to the countries which were parties to the Berne Convention at the commencement of the Copyright Act 1911 see Order in Council dated 24 June 1912, SR & O 1912/913 (revoked).

11 See the Copyright Act 1842 s 18 (repealed).

12 This included any person who projected, conducted and carried on or was the proprietor of any periodical work or book: see the Copyright Act 1842 s 18 (repealed); *Ward, Lock & Co Ltd v Long* [1906] 2 Ch 550 at 560.

13 The word 'book' was not construed as ejusdem generis with periodical work: *Ward, Lock & Co Ltd v Long* [1906] 2 Ch 550 at 560.

14 See the Copyright Act 1842 s 18 (repealed), as explained in *Lawrence and Bullen Ltd v Aflalo* [1904] AC 17, HL. Proof had to be given that the contributor was paid (*Brown v Cooke* (1846) 16 LJ Ch 140), and the payment must have been in full (*Ward, Lock & Co v Long* [1906] 2 Ch 550 at 561; *Collingridge v Emmott* (1887) 57 LT 864). In certain cases the author had the right of publishing his contribution in a separate form and the publisher was in certain circumstances restricted from so publishing it without consent: see the Copyright Act 1842 s 18 (repealed). In particular, in the case of essays and articles in reviews, magazines or other periodicals of like nature, after 28 years from first publication the right of publication in a separate form reverted to the author for the remainder of the term of copyright: see s 18 (repealed). For provision saving the last-mentioned right in the case of works made before 1 July 1912 see the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 11(1); and PARA 16 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(ii) Law before 1 July 1912/B. PARTICULAR WORKS/22. Registration and assignment of literary works.

22. Registration and assignment of literary works.

Literary works were required to be registered at Stationers' Hall¹ before the commencement of any action², although the author had copyright without registration³. A certified copy of an entry in the statutory register at Stationers' Hall was prima facie evidence of the facts there stated⁴.

A registered proprietor of copyright could assign his interest or any portion of his interest therein by making an entry in the register kept at Stationers' Hall and the assignment so entered was effectual in law, without stamp or duty⁵. The proprietary rights in unpublished literary compositions and the copyright in books were capable of being assigned by the author or his assignee, by way of gift, bequest or sale; or the right could be assigned by operation of law⁶. An assignment was required to be in writing⁷, and a written agreement to assign a future work was enforceable in equity⁸.

1 Stationers' Hall was maintained by the Stationers' Company, a Livery Company of the City of London. The company is now known as the Stationers' and Newspaper Makers' Company. Following the repeal of the registration provisions by the Copyright Act 1911 s 36, Sch 2 (repealed), which took full effect at the end of 1923, the company maintained a voluntary register for books and fine arts for the purpose of record and for assisting in the proof of the existence of a work on a given date in case of infringement. The register was closed to new registrations in February 2000, and no further applications may be made for registrations of any nature.

2 See the Copyright Act 1842 ss 11, 24 (repealed).

3 See *ibid* s 24 (repealed); cf *EW Savory Ltd v World of Golf Ltd* [1914] 2 Ch 566, CA.

4 *Falcon v Famous Players Film Co* [1926] 1 KB 393 (affd [1926] 2 KB 474, CA).

5 See the Copyright Act 1842 ss 11, 13 (repealed).

6 See *ibid* s 2 (repealed). As to the effect of an assignment before 1 July 1912 see PARA 173 note 8 post.

7 Copyright Act 1842 s 15 (repealed); *Hole v Bradbury* (1879) 12 ChD 886 at 894.

8 *Ward, Lock & Co Ltd v Long* [1906] 2 Ch 550.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(ii) Law before 1 July 1912/B. PARTICULAR WORKS/23. Dramatic and musical works.

23. Dramatic and musical works.

The author of a dramatic or musical work had, prior to publication or first public performance, an exclusive right to performance in public¹. After publication or first performance he acquired literary copyright in the manuscript as a book². The works on which this right was conferred were tragedies, comedies, plays, operas, farces, or other scenic, musical or dramatic entertainment³. The work was required to be capable of being printed and published⁴. There was no performing right in a novel; nor was it an infringement of copyright to dramatise a novel unless the text was copied⁵.

The performing right⁶ in any musical composition first published after 10 August 1882⁷ was lost unless the proprietor of the copyright or his assignee had printed, or had caused to be printed, a notice reserving the performing right on the title page of every copy of the work published before 1 July 1912⁸.

1 The manuscript of such works, if unpublished, enjoyed common law copyright: see PARA 17 ante. As to performing right which was enjoyed in relation to dramatic and musical works see PARA 18 ante.

2 See the Copyright Act 1842 ss 2, 3 (repealed); and PARAS 17, 21 ante. As to foreign works see PARA 21 note 10 ante.

3 See *ibid* s 2 (repealed); and the definition in the Dramatic Copyright Act 1833 s 1 (repealed).

4 *Tate v Fullbrook* [1908] 1 KB 821, CA; *Karno v Pathé Frères London Ltd* (1908) 99 LT 114 (affd without dealing with this point (1909) 100 LT 260, CA); and see *Bishop v Viviana & Co* (1909) Times, 15 January.

5 *Toole v Young* (1874) LR 9 QB 523; *Warne & Co v Seebohm* (1888) 39 ChD 73.

6 As to performing right under the Copyright Act 1842 (repealed) see PARA 18 ante.

7 Ie the date on which the Copyright (Musical Compositions) Act 1882 (repealed) came into force.

8 See the Copyright (Musical Compositions) Act 1882 s 1 (repealed); and *Fuller v Blackpool Winter Gardens and Pavilion Co* [1895] 2 QB 429, CA. The date mentioned in the text is the date on which the Copyright Act 1911 came into force in the United Kingdom: see PARA 30 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(ii) Law before 1 July 1912/B. PARTICULAR WORKS/24. Registration and assignment of performing right.

24. Registration and assignment of performing right.

Registration at Stationers' Hall¹ of a performing right² was not a condition precedent to the acquisition of the right³, but a certified copy of the entry was prima facie proof of the proprietorship of the right⁴.

The registered proprietor of a performing right could assign his interest, or any portion of it, by an entry in the register at Stationers' Hall⁵. An assignment of copyright in a dramatic or musical work made by entry in the register did not convey the performing right to the assignee, unless the entry expressed the intention of the parties that the performing right, as well as the copyright, should be assigned⁶.

1 See PARA 22 ante.

2 As to performing right enjoyed under former law see PARA 18 ante.

3 See the Copyright Act 1842 s 24 (repealed); and *Hardacre v Armstrong* (1905) 21 TLR 189.

4 See the Copyright Act 1842 ss 11, 20 (repealed). The entry is also prima facie proof of the date and place of the first performance: see *Falcon v Famous Players Film Co* [1926] 2 KB 474, CA (incorrect entry supplemented by other evidence).

5 See the Copyright Act 1842 s 22 (repealed).

6 See *ibid* s 22 (repealed). Section 22 (repealed) applied to assignments made by entry in the register in the manner described by s 13 (repealed) only: *Ex p Hutchins* (1879) 4 QBD 483, CA; *Lacy v Rhys* (1864) 4 B & S 873.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(ii) Law before 1 July 1912/B. PARTICULAR WORKS/25. Published artistic works.

25. Published artistic works.

In general, the author, or his assignee, of every original painting, drawing or photograph, wherever made, which was first published in the United Kingdom, any British possession¹, or any one of certain foreign countries², was entitled to copyright in the United Kingdom under the Fine Arts Copyright Act 1862³. An artistic work was published by being publicly exhibited for sale or sold⁴. Any published print, engraving or lithograph was protected by the Engraving Copyright Act 1766, which conferred copyright on the author of such a print⁵. The author of any published⁶ article of sculpture, or his assignee, was entitled to copyright under the Sculpture Copyright Act 1814⁷. The author was the person who made the work or caused it to be made⁸.

1 See the International Copyright Act 1886 s 8 (repealed).

2 See PARA 21 note 10 ante.

3 As to the term of copyright in such works see PARA 18 note 3 ante. The Fine Arts Copyright Act 1862 (repealed) did not extend outside the United Kingdom: *Graves & Co Ltd v Gorrie* [1903] AC 496, PC. As to the effect of disposition of the painting etc, and as to commissioned works, see PARA 26 post.

4 *Britain v Hanks Bros & Co* (1902) 86 LT 765; *Turner v Robinson* (1860) 10 I Ch R 510, CA; and see *Mansell v Valley Printing Co* [1908] 1 Ch 567 at 573 per Swinfen-Eady J (affd [1908] 2 Ch 441, CA).

5 See the Engraving Copyright Act 1766 s 1 (repealed); and the International Copyright Act 1852 s 12 (repealed). As to the term of copyright in such works see PARA 18 note 1 ante. For the meaning of 'author' see the Engraving Copyright Act 1766 ss 1, 2 (repealed). As to foreign prints cf PARA 21 note 10 ante. The supplier of material and information acquired copyright, although he could not himself draw: *Stannard v Harrison* (1871) 24 LT 570. Such a person would not have been the author of artistic works other than prints (*Kenrick & Co v Lawrence & Co* (1890) 25 QBD 99), although he might have been the owner of the copyright.

6 The placing of an article of sculpture in a showroom for sale amounted to publication: *Britain v Hanks Bros & Co* (1902) 86 LT 765.

7 As to the term of copyright in such works see PARA 18 note 2 ante; as to foreign works see PARA 21 note 10 ante; and as to sale of copyright see PARA 26 post.

8 See the Sculpture Copyright Act 1814 s 1 (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(ii) Law before 1 July 1912/B. PARTICULAR WORKS/26. Ownership of artistic work.

26. Ownership of artistic work.

If the author of any painting, drawing, or photograph sold or disposed of the painting or drawing or the negative of the photograph, he lost the copyright, unless it was expressly reserved by an agreement in writing signed, at or before the time of sale or disposition, by the purchaser or person to whom he disposed of it. In the absence of written agreement reserving or assigning the copyright there is no copyright in a painting, drawing, or the negative of a photograph sold or disposed of prior to 1 July 1912¹.

When a painting, drawing, or photograph was made for or on behalf of any person for a good or valuable consideration², the copyright in it belonged to that person, unless it was expressly reserved under a written agreement, signed by him, at or before the time when the work passed out of the hands of the artist³.

Any sale of the copyright in an article of sculpture was required to be by deed⁴.

1 See the Fine Arts Copyright Act 1862 ss 1, 2 (repealed); and *Levi v Champion & Co* (1887) 3 TLR 286. The date mentioned in the text is the date on which the Copyright Act 1911 came into force in the United Kingdom: see PARA 30 post.

2 As to what constituted a good or valuable consideration see *Melville v Mirror of Life Co* [1895] 2 Ch 531 (photograph taken on terms that the photographer might sell copies); *Stackemann v Paton* [1906] 1 Ch 774 (photographer permitted to enter premises to take photographs on chance of selling copies).

3 See the Fine Arts Copyright Act 1862 s 1 (repealed).

4 See the Sculpture Copyright Act 1814 s 4 (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(ii) Law before 1 July 1912/B. PARTICULAR WORKS/27. Unpublished artistic works.

27. Unpublished artistic works.

The author of any unpublished artistic work was entitled at common law to a proprietary right or interest in it¹. He could restrain any person from making and publishing copies of the work, and he had the right of acquiring by publication copyright for the statutory term².

1 This proprietary right became copyright under the Copyright Act 1911: see PARA 31 post.

2 *Mansell v Valley Printing Co* [1908] 2 Ch 441, CA; *Bowden Bros v Amalgamated Pictorials Ltd* [1911] 1 Ch 386; *Prince Albert v Strange* (1849) 1 Mac & G 25; *Turner v Robinson* (1860) 10 I Ch R 510, CA. As to copyright in published works see PARA 25 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(iii) Law under the Copyright Act 1911/28. Works protected by the Copyright Act 1911.

(iii) Law under the Copyright Act 1911

28. Works protected by the Copyright Act 1911.

The Copyright Act 1911 conferred copyright protection on all classes of works previously protected under earlier legislation¹ and in addition on works of artistic craftsmanship², works of architecture³ and sound recordings⁴, the last being protected 'in like manner as if they were musical works'⁵.

1 As to such earlier legislation see PARA 17 et seq ante.

2 See the Copyright Act 1911 ss 1(1), 35(1) (repealed). As to works of artistic craftsmanship see PARA 80 post.

3 See ibid ss 1(1), 35(1) (repealed). As to works of architecture see PARA 79 post.

4 For these purposes, 'sound recording' meant records, perforated rolls and other contrivances by means of which sound could be mechanically reproduced: ibid s 19(1) (repealed).

5 Ibid s 19(1) (repealed); and see *Gramophone Co Ltd v Stephen Cawardine & Co* [1934] Ch 450. This applied also to records, perforated rolls or other contrivances made prior to 1 July 1912 (ie the date on which the Copyright Act 1911 came into force in the United Kingdom: see PARA 30 post): s 19(8) (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(iii) Law under the Copyright Act 1911/29. Duration of copyright.

29. Duration of copyright.

Under the Copyright Act 1911 the term for which copyright subsisted, except as otherwise expressly provided by the Act, was the life of the author and a period of 50 years after his death¹. In the case of any work existing immediately before 1 July 1912² on which the substituted rights created by the Copyright Act 1911 were conferred, the term of copyright under that Act was the term for which it would have subsisted if that Act had been in force at the date when the work was made, and the work had been one entitled to copyright under that Act³.

1 Copyright Act 1911 s 3 (repealed). As to the corresponding periods in force by virtue of the Copyright, Designs and Patents Act 1988 see PARA 93 et seq post.

2 I.e. the date on which the Copyright Act 1911 came into force in the United Kingdom: see PARA 30 post.

3 See *ibid* s 24(1) (repealed). As a rule it will not be necessary, for the purpose of ascertaining whether copyright still subsists, to consider legislation earlier than the Copyright Act 1911. The main exception to the rule concerns prints, lithographs and engravings (and in certain circumstances sculptures) where the copyright period before the Copyright Act 1911 was 28 years from publication (see PARAS 18, 24 ante). This period was converted by s 3 (repealed) into the new period of the life of the author plus 50 years. Consequently, it is possible that the current existence of such copyright in works made before 1 July 1912 will depend on the provisions of the legislation in force at the time when the work was made, in order to ascertain whether the copyright was in existence immediately before 1 July 1912 and was thereby converted into the new period. Moreover legislation in force before 1 July 1912 is still relevant to determine who was the author and first owner of the copyright: see the Copyright, Designs and Patents Act 1988 s 170, Sch 1 paras 10, 11(1); and PARA 16 ante. See also PARAS 117, 135 post. It is also relevant where an author who was alive on 1 July 1912 assigned the copyright in a work before that date: see PARA 173 note 8 post. As to the various terms of copyright under the legislation in force before 1 July 1912 see PARAS 17-18 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(iii) Law under the Copyright Act 1911/30. Nature of copyright conferred by the Copyright Act 1911 on earlier works.

30. Nature of copyright conferred by the Copyright Act 1911 on earlier works.

The Copyright Act 1911 came into force in the United Kingdom on 1 July 1912¹, and, generally speaking, works which existed before that date thereafter derived protection exclusively from that Act² until the passing of the Copyright Act 1956³.

The scheme of the Copyright Act 1911 was to substitute, in favour of the then existing owner of a subsisting right, the new rights created by that Act⁴.

1 Copyright Act 1911 s 37(2)(a) (repealed). The Act came into operation in the Channel Islands on the dates fixed by the states of those islands: see s 37(2)(c) (repealed). Those dates were 22 June 1912 in the case of Guernsey and 8 March 1913 in the case of Jersey. For the Isle of Man it came into operation on 5 July 1912 on its proclamation by the Governor: see s 37(2)(d) (repealed).

Provision was made for the Act to apply to British possessions (see ss 25-28, 30, 37(2)(b), (d) (all repealed)), and it was extended by Order in Council under s 29 (repealed) to works published in certain foreign countries.

2 See *ibid* ss 1(1), 31 (repealed). As to university copyright see, however, PARA 6 ante. As to prerogative rights see PARA 5 ante.

3 See PARA 35 et seq post.

4 See the Copyright Act 1911 s 24, Sch 1 (repealed). As to the term of copyright see PARA 29 ante. It is still necessary to refer to the Copyright Act 1911 to determine who was the author of a work made between 1 July 1912 and 31 May 1957 inclusive and who was the first owner of that copyright: see the Copyright, Designs and Patents Act 1988 s 170, Sch 1 paras 10, 11(1); and PARA 16 ante. Otherwise, works made during the operation of the Copyright Act 1911 (ie in the United Kingdom between 1 July 1912 and 31 May 1957 inclusive) are now governed by the Copyright, Designs and Patents Act 1988 and reference should be made to that Act and in particular to Sch 1 for any modifications of its provisions in relation to such works: see PARA 54 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(iii) Law under the Copyright Act 1911/31. Copyright and performing right.

31. Copyright and performing right.

Any person who, immediately before 1 July 1912¹, was entitled to copyright in a work under the then existing law (including the right at common law to restrain publication or other dealing with an unpublished work²), or, in the case of a musical or dramatic work, to both copyright and performing right, became on that date entitled to copyright, as defined by the Copyright Act 1911, in that work³. If the copyright and the performing right (including any right at common law to restrain the performance of the work in public) in a musical or dramatic work were vested in different persons on 1 July 1912, the person entitled to the copyright became entitled to copyright, as defined by the Copyright Act 1911, excepting the sole right to perform the work or any part of it in public, and the person entitled to the performing right became entitled to the sole right to perform the work in public, but to none of the other rights comprised in copyright, as defined by the Copyright Act 1911⁴. The performing rights so vested included the right to perform the work in public by means of a cinematograph film⁵.

Any person who, while not entitled to the whole right, was entitled to any interest in the copyright or performing right prior to 1 July 1912, became entitled to the same interest in the substituted right conferred by the Copyright Act 1911⁶. That Act conferred copyright for a term of 50 years, in respect of records or other contrivances whereby sounds might be mechanically reproduced; the right was conferred in respect of contrivances existing on 1 July 1912, as though the Act had been in force at the date of the making of the original plate from which they were directly or indirectly derived, though not so as to have any retrospective effect⁷. Copyright under the Copyright Act 1911 was conferred on a work which enjoyed copyright under the pre-existing law notwithstanding that, if it had come into existence on or after 1 July 1912, it might not have enjoyed copyright because it was of alien authorship⁸. Save as aforesaid (and save for the preservation of the university copyright⁹), the Act provided that copyright was not to subsist in any work made before 1 July 1912¹⁰.

1 le the date on which the Copyright Act 1911 came into force in the United Kingdom: see PARA 30 ante.

2 See PARA 17 ante.

3 See the Copyright Act 1911 s 24(1), Sch 1 (repealed). In the Copyright, Designs and Patents Act 1988 references in s 170, Sch 1 to copyright include the substituted rights conferred by the Copyright Act 1911 s 24 (repealed): Copyright, Designs and Patents Act 1988 Sch 1 para 2(2)(a).

4 See the Copyright Act 1911 Sch 1 (repealed).

5 *Barstow v Terry* [1924] 2 Ch 316; *Falcon v Famous Players Film Co* [1926] 1 KB 393 (affd [1926] 2 KB 474, CA).

6 See the Copyright Act 1911 s 24(1) (repealed).

7 See *ibid* s 19(8) (repealed). As to copyright in sound recordings etc under the Copyright, Designs and Patents Act 1988 see PARAS 83-84 post.

8 *Falcon v Famous Players Film Co* [1926] 1 KB 393; affd [1926] 2 KB 474, CA. It was, however, held that, if the Copyright Act 1911 s 24 (repealed) applied, it was unnecessary to look at s 1 (repealed).

9 As to university copyright see PARA 6 ante.

10 See the Copyright Act 1911 s 24(3) (repealed). As to the Acts repealed by the Copyright Act 1911 see s 36, Sch 2 (repealed). The repeals made by the Copyright Act 1911 did not take effect in any part of the

Sovereign's dominions until the Act came into operation in that part: see s 36(1) (repealed). See also s 26(1), (2) (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(iii) Law under the Copyright Act 1911/32. Wartime legislation.

32. Wartime legislation.

The copyright in works first published or made in an enemy country during the 1914-1918 war were vested in the Public Trustee¹, and subsequently revested in the owners, subject to conditions², which were afterwards removed³.

No such general vesting of enemy copyrights took place during the 1939-1945 war⁴, although the power to make vesting orders existed⁵. Trading with the enemy was made an offence⁶, and an assignment of copyrights made by or on behalf of an enemy was ineffective unless sanctioned by the Treasury⁷, but existing licences were not invalidated nor were contracts relating to them⁸. Power was given to the Comptroller General of Patents, Designs and Trade Marks⁹ to revoke or vary licences by enemy owners of copyrights in favour of United Kingdom residents¹⁰, and to grant licences in respect of enemy-owned copyrights at least so long as they remained enemy-owned¹¹. In so far as this power was not exercised, and if no order vesting the copyright in a custodian was made¹², the copyright remained unaffected by the war; and if the owner ceased to be an enemy, he was entitled to exercise the copyright subject to any such licence and except in so far as it restricted his right¹³. A licensee was, however, entitled to sue for infringement in his own name¹⁴.

1 See the Trading with the Enemy (Copyright) Act 1916 (repealed).

2 The vesting was effected by Orders of the Board of Trade dated 9 November 1920, SR & O 1920/2119 (Germany and Austria), and 16 August 1921, SR & O 1921/1314 (Hungary).

3 See the Orders of the Board of Trade dated 17 May 1930, SR & O 1930/341 (Germany), 29 October 1930, SR & O 1930/854 (Austria), and 9 April 1931, SR & O 1931/311 (Hungary).

4 See the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 5 (as amended); and PARA 33 post. The word 'enemy' in that Act has the same meaning as in the Trading with the Enemy Act 1939 (see note 5 infra); Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 10(1).

5 See the Trading with the Enemy Act 1939 s 7 (as amended); the Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198, art 2; and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 585. For the meaning of 'enemy' see the Trading with the Enemy Act 1939 s 2 (as amended); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 577.

6 See *ibid* s 1 (as amended); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 580. Licence to trade with persons in Germany in respect of German-owned copyright in any literary, dramatic, musical and artistic work was given by the Trading with the Enemy (Authorisation) (Germany) Order 1952, SI 1952/4; but that Order does not authorise trade in respect of any copyright in so far as it is the subject of a licence under the provisions referred to in note 10 infra.

7 See the Trading with the Enemy Act 1939 s 4(1); *Novello & Co Ltd v Hinrichsen Edition Ltd* [1951] Ch 595 at 607, [1951] 1 All ER 779 at 785 (affd [1951] Ch 1026, [1951] 2 All ER 457, CA); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 583.

8 See the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 1(1) (as amended); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 587.

9 As to the Comptroller General of Patents, Designs and Trade Marks see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 577.

10 See the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 1(2) (as amended); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 587.

11 See *ibid* s 2 (as amended); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 587. Section 2 (as amended) conferred power on the licensee to sue for infringement, and for the order to be revoked. The procedure was prescribed by the Patents, Designs, Copyright and Trade Marks (Emergency) Rules 1939, SR & O 1939/1375 (amended by SR & O 1940/693) (now spent). In *Novello & Co Ltd v Hinrichsen Edition Ltd* [1951] Ch 1026, [1951] 2 All ER 457, CA, the Court of Appeal left open the question whether it was sufficient to give the Comptroller General jurisdiction that the copyright had been enemy-owned at any time after the commencement of the war.

12 See under the Trading with the Enemy Act 1939 s 7 (as amended).

13 *Novello & Co Ltd v Hinrichsen Edition Ltd* [1951] Ch 1026, [1951] 2 All ER 457, CA.

14 *Novello & Co Ltd v Ernst Eulenberg Ltd* [1950] 1 All ER 44, CA.

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33. Effect of war on international copyright.

When Her Majesty is at war with a country in respect of which there was in force immediately before the commencement of the war an Order in Council providing for the application of the Copyright, Designs and Patents Act 1988 to foreign works¹, then, unless and until the Order is revoked under that Act, it is deemed for the purposes of that Act to continue in force, notwithstanding the state of war, subject to any alteration or variation under that Act².

¹ I.e. an Order in Council made under the Copyright, Designs and Patents Act 1988 s 159 (see PARA 447 post) or s 256 (see PARA 503 post).

² Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 5(1) (amended by the Copyright, Designs and Patents Act 1988 s 303(1), Sch 7 para 3(1), (4)(a)). Provision as to the subsistence of copyright in such a case despite ownership of the copyright by an enemy and the operation of the Trading with the Enemy Act 1939 in relation to it is made by the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 5(2) (amended by the Copyright, Designs and Patents Act 1988 Sch 7 para 3(1), (4)(b)).

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34. Extinction of German copyrights.

German copyrights and interests in copyright were extinguished when a person acting in good faith on behalf of the Crown committed between 3 September 1939 and 9 July 1951¹ what would otherwise be an infringement of the copyright or when such a person, or a person acting in good faith on behalf of an allied power, brought into His Majesty's Dominions without infringing copyright or into allied territory a work in which German copyright or an interest in copyright subsisted².

1 See the Enemy Property Act 1953 s 13(1) (repealed). The formal state of war with Germany was terminated at 4 pm on 9 July 1951: see the declaration published in the Supplement to the London Gazette dated 9 July 1951 at p 3739, and corrected in the London Gazette dated 2 October 1951 at p 5117. See also the declaration dated 5 June 1945 on the Unconditional Surrender of Germany (Cmd 6648).

2 See the Enemy Property Act 1953 s 6 (repealed). Section 6 (repealed) did not apply to copyright which came into existence on or after 29 March 1949: see s 6(1) proviso (repealed).

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(iv) Law under the Copyright Act 1956

A. IN GENERAL

35. The Copyright Act 1956.

The Copyright Act 1956¹, which came into force in the United Kingdom on 1 June 1957², repealed almost the whole of the Copyright Act 1911³, but most of the provisions of the earlier Act were re-enacted in modified form. The Copyright Act 1956 extended the subject matter of copyright to cinematograph films⁴, television and sound broadcasting⁵ and published editions of works⁶ and, from 1 January 1985, to a cable programme included in a cable programme service⁷. It also established the Performing Right Tribunal⁸ and abolished, subject to savings, the compulsory licensing scheme established by the Copyright Act 1911. Part I⁹ of the Copyright Act 1956 dealt with copyright in literary, dramatic, musical and artistic works; and Part II¹⁰ of that Act dealt with copyright in sound recordings, cinematograph films, broadcasts, cable programmes and published editions of works.

1 The Copyright Act 1956 has now been wholly repealed by the Copyright, Designs and Patents Act 1988: see s 303(2), Sch 8.

2 See the Copyright Act 1956 (Commencement) Order 1957, SI 1957/863, art 1. For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

3 See the Copyright Act 1956 s 50(2), Sch 9 (repealed). The provisions of the Copyright Act 1911 which were not repealed were: s 15 (delivery of copies to libraries; now repealed by the Legal Deposit Libraries Act 2003 s 15(1), Sch 1); the Copyright Act 1911 s 34 (saving of compensation to certain libraries; now repealed by the Statute Law (Repeals) Act 1986 s 1(1), Sch 1 Pt VI); and the Copyright Act 1911 s 37(1), (2) (short title and commencement; s 37(2) now repealed by the Statute Law (Repeals) Act 1986 Sch 1 Pt VI).

4 See the Copyright Act 1956 s 13 (repealed); and PARA 43 post.

5 See *ibid* s 14 (repealed); and PARA 44 post.

6 See *ibid* s 15 (repealed); and PARA 46 post.

7 See *ibid* s 14A (as added; repealed); and PARA 45 post.

8 See *ibid* Pt IV (ss 23-30) (repealed). The Performing Right Tribunal has now been renamed as the Copyright Tribunal: see the Copyright, Designs and Patents Act 1988 s 145 (as amended); and PARA 207 post.

9 *Ie* the Copyright Act 1956 Pt I (ss 1-11) (repealed).

10 *Ie* *ibid* Pt II (ss 12-16) (repealed).

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36. Transitional operation of the Copyright Act 1956.

Subject to certain savings¹, the Copyright Act 1956 contained the general law relating to copyright in the United Kingdom and the other countries to which it extended². Although most of the Copyright Act 1911 was repealed³, rights which arose by virtue of that Act were generally kept in being by the Copyright Act 1956, subject to its transitional provisions⁴. Works subject to copyright before the Copyright Act 1911 continued to be protected by the Copyright Act 1956 in so far as the substituted copyright conferred on them by the Copyright Act 1911⁵ continued to subsist immediately before the Copyright Act 1956 came into force.

The effect of the transitional provisions was that the law applicable to works made between 1 July 1912⁶ and 1 June 1957⁷ was the same as that applicable to works made thereafter, except where the Copyright Act 1956 specifically provided otherwise⁸.

1 See the Copyright Act 1956 s 46(5) (repealed).

2 The Copyright Act 1956 extended to Northern Ireland: see s 51(3) (repealed). As to the extension and application of the Act outside the United Kingdom see PARAS 52-53 post. For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

3 See PARA 35 ante.

4 See the Copyright Act 1956 s 50(1) (repealed), by which the transitional provisions contained in s 50(1), Sch 7 (repealed) had effect for the purpose of that Act and Sch 8 (repealed) (setting out certain provisions of the Copyright Act 1911 and rules) had effect in accordance with those transitional provisions. As to the transitional provisions specially relating to works made before 1 July 1912 see the Copyright Act 1956 Sch 7 Pt VII paras 34-38 (repealed). The mention of any particular matter in Sch 7 (repealed) with regard to the repeal of the Copyright Act 1911 did not affect the general application of the Interpretation Act 1889 s 38 (repealed): see the Copyright Act 1956 Sch 7 para 42 (repealed). As to the construction of provisions set out in Sch 8 (repealed) see Sch 7 para 43, Sch 8 para 9 (repealed); and as to the adaptation of references to repealed enactments etc in enactments or other documents see Sch 7 para 44 (repealed).

5 See PARA 30 ante.

6 Ie the date on which the Copyright Act 1911 came into force in the United Kingdom: see PARA 30 ante.

7 Ie the date on which the Copyright Act 1956 (repealed) came into force in the United Kingdom: see PARA 35 ante.

8 See *ibid* Sch 7 para 45(1) (repealed), by virtue of which, except in so far as was otherwise expressly provided in Sch 7 (repealed), the provisions of the Copyright Act 1956 applied in relation to things existing at the commencement of those provisions as they applied in relation to things coming into existence thereafter.

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B. SUBJECT MATTER AND CONDITIONS OF COPYRIGHT

(A) CLASSIFICATION AND GENERAL CONDITIONS

37. Subject matter of copyright.

Copyright subsisted, subject to the provisions of the Copyright Act 1956, in every original¹ literary², dramatic³, or musical⁴ work or adaptation⁵ thereof; in every original artistic work⁶; and in every sound recording⁷, cinematograph film⁸, sound⁹ and television¹⁰ broadcast, cable programme¹¹ included in a cable programme service¹², and published edition¹³ of a literary, dramatic or musical work¹⁴. No one was entitled to the copyright in any work, whether published or unpublished, except under and in accordance with the provisions of the Copyright Act 1956 or any other statutory enactment for the time being in force¹⁵.

Copyright subject matter was divided by the Act into two classes, namely works ('Part I copyright'¹⁶) and other subject matter ('Part II copyright'¹⁷). Part I copyright consisted of two kinds of works: (1) literary, dramatic and musical works¹⁸; and (2) artistic works¹⁹. Part II subject matter was of five classes: (a) sound recordings²⁰; (b) cinematograph films (which included the sound track to the film)²¹; (c) sound and television broadcasts²²; (d) cable programmes included in a cable programme service²³; and (e) the typographical arrangement of published editions of literary, dramatic and musical works²⁴. Part II copyright was additional to, and independent of, Part I copyright²⁵.

Copyright could exist in works of joint authorship²⁶ and in anonymous and pseudonymous works²⁷.

1 For the meaning of 'originality' in relation to the same requirement in the Copyright, Designs and Patents Act 1988 see PARA 65 post.

2 For these purposes, 'literary work' included any written table or compilation: Copyright Act 1956 s 48(1) (repealed). Computer programs were protected as literary works: see the Copyright (Computer Software) Amendment Act 1985 s 1(1) (repealed), which was probably declaratory of the existing state of the law.

3 For these purposes, 'dramatic work' included a choreographic work or entertainment in dumb show if reduced to writing in the form in which the work or entertainment was to be presented but did not include a cinematograph film, as distinct from the scenario or script for a cinematograph film: Copyright Act 1956 s 48(1) (repealed).

4 The expression 'musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 post.

5 See the Copyright Act 1956 s 2(1), (5)(g) (repealed). For these purposes, 'adaptation' meant:

4 (1) in relation to a literary or dramatic work, any of the following: (a) in the case of a non-dramatic work, a version of the work, whether in its original language or a different language, in which it was converted into a dramatic work; (b) in the case of a dramatic work, a version of the work, whether in its original language or a different language, in which it was converted into a non-dramatic work; (c) a translation of the work; (d) a version of the work in which the story or action was conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical; and

5 (2) in relation to a musical work, an arrangement or transcription of the work,

but the mention of any matter in the above definition does not affect the generality of s 2(5)(a) (repealed): s 2(6) (repealed). For the meaning of 'adaptation' in the Copyright, Designs and Patents Act 1988 see PARA 327 post.

6 See the Copyright Act 1956 s 3(1) (repealed). For these purposes, 'artistic work' meant a work of any of the following descriptions: (1) the following, irrespective of artistic quality, namely, paintings, sculptures, drawings, engravings and photographs; (2) works of architecture, being either buildings or models for buildings; (3) works of artistic craftsmanship not falling within any of the preceding categories: ss 3(1), 48(1) (repealed). For the meaning of 'irrespective of artistic quality' see PARA 75 note 5 post. 'Drawing' included any diagram, map, chart or plan; 'engraving' included any etching, lithograph, woodcut, print or similar work, not being a photograph; and 'photograph' meant any product of photography or of any process akin to photography other than a cinematograph film: s 48(1) (repealed). 'Building' included any structure: s 48(1) (repealed). The expression 'work of artistic craftsmanship' was not defined. As to artistic works under the present law see PARA 74 et seq post.

7 For these purposes, 'sound recording' meant the aggregate of sounds embodied in, and capable of being reproduced by means of, a record of any description, other than the soundtrack associated with a cinematograph film (see note 8 infra): ibid ss 12(9), 48(1) (repealed). 'Record' meant any disc, tape, perforated roll or other device in which sounds were embodied so as to be capable, with or without the aid of some other instrument, of being automatically reproduced therefrom: s 48(1) (repealed).

8 For these purposes, 'cinematograph film' meant any sequence of visual images recorded on material of any description, whether translucent or not, so as to be capable, by the use of that material: (1) of being shown as a moving picture; or (2) of being recorded on other material, whether translucent or not, by the use of which it could be so shown: ibid ss 13(10), 48(1) (repealed). A cinematograph film was to be taken to include the sounds embodied in any soundtrack associated with the film, and references to a copy of a cinematograph film were to be construed accordingly: s 13(9) (repealed). 'Copy', in relation to a cinematograph film, meant any print, negative, tape or other article on which the film or part of it was recorded: s 13(10) (repealed). References to a soundtrack associated with a film were references to any record of sounds which was incorporated in any print, negative, tape or other article on which the film or part of it, in so far as it consisted of visual images, was recorded, or which was issued by the maker of the film for use in conjunction with such an article: s 13(10) (repealed). As to the present copyright regime in respect of film soundtracks see PARA 87 post.

9 For these purposes, 'sound broadcast' meant sounds broadcast otherwise than as part of a television broadcast (see note 10 infra): ibid ss 14(10), 48(1) (repealed).

10 For these purposes, 'television broadcast' meant visual images broadcast by way of television, together with any sounds broadcast for reception along with those images: ibid ss 14(10), 48(1) (repealed).

11 For these purposes, 'cable programme' meant a programme which was included, on and after 1 January 1985 (ie the date on which the Cable and Broadcasting Act 1984 s 22 came into force), in a cable programme service (see note 12 infra); and 'programme', in relation to a cable programme service, meant any item included in that service: Copyright Act 1956 s 14A(11) (added by the Cable and Broadcasting Act 1984 s 22; repealed).

12 For these purposes, 'cable programme service' meant a service within the meaning of the Cable and Broadcasting Act 1984 (repealed) or a service provided outside the United Kingdom which would be such a service if s 2(7) (repealed) and references in s 2(1) (repealed) to the United Kingdom were omitted: Copyright Act 1956 s 14A(11) (as added (see note 11 supra); repealed). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

13 The expression 'published edition' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'published edition' in the Copyright, Designs and Patents Act 1988 see PARA 92 post.

14 See the Copyright Act 1956 ss 12-15 (repealed).

15 See ibid s 46(5) (repealed).

16 Ie copyright dealt with in ibid Pt I (ss 1-11) (repealed): see PARAS 40-41 post.

17 Ie copyright dealt with in ibid Pt II (ss 12-16) (repealed): see PARA 42 et seq post.

18 See ibid s 2(1) (repealed); and PARA 40 post.

19 See ibid s 3 (repealed); and PARA 41 post.

20 See ibid s 12(1) (repealed); and PARA 42 post.

21 See *ibid* s 13(1), (9) (repealed); and PARA 43 post.

22 See *ibid* s 14(1) (repealed); and PARA 44 post.

23 See *ibid* s 14A (as added and repealed); and PARA 45 post.

24 See *ibid* s 15(1) (repealed); and PARA 46 post.

25 See *ibid* s 16(7) (repealed).

26 See *ibid* s 11(2), Sch 3 (repealed); and PARA 50 post. For these purposes, 'work of joint authorship' meant a work produced by the collaboration of two or more authors in which the contribution of each author was not separate from the contribution of the other author or authors: s 11(3) (repealed). Joint authorship does not require the existence of a common intention as to joint authorship. The requirements that the authors should have collaborated and that their contributions should not be 'separate' will not be met unless there has been joint labouring in furtherance of a common design; but 'common design' in this context does not mean an intention that there should be joint authorship: *Beckingham v Hodgens* [2003] EWCA Civ 143, [2003] IP & T 1115, [2003] EMLR 376.

27 See Copyright Act 1956 s 11(1), Sch 2 (repealed); and PARA 49 post. For these purposes, 'anonymous or pseudonymous work' meant one in which the identity of the author or authors was unknown, by which was meant that it was not possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry: Sch 2 para 2 (repealed). Publication of a work under two or more names was not, however, to be taken to be as pseudonymous unless all the names were pseudonyms: Sch 2 para 3 (repealed).

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38. Qualification of author or maker.

The existence of copyright in a work or in a sound recording, cinematograph film, cable programme included in a cable programme service or published edition of a work could depend on the qualification of the author or maker¹. A qualified person, for the purpose of any provision of the Copyright Act 1956, which specified the conditions under which copyright might subsist in any description of work or other subject matter, was, in the case of an individual, a person who was a British subject or British protected person² or a citizen of the Republic of Ireland, or, not being any of these, was domiciled³ or resident⁴ in the United Kingdom⁵ or other country to which the relevant provision extended⁶. A corporate body was a qualified person if it was incorporated under the laws of any part of the United Kingdom or other country to which the Copyright Act 1956 extended⁷.

1 As to the relevance of qualification to copyright in different works and subject matters see PARAS 40-43, 45-46 post. Copyright subsisted in broadcasts from the United Kingdom, or other country to which the Copyright Act 1956 s 14 (repealed) extended, made by the British Broadcasting Corporation or the Independent Broadcasting Authority: see s 14(1) (repealed); the Independent Broadcasting Authority Act 1973 s 38 (repealed); the Broadcasting Act 1981 s 65(3), Sch 8 para 7 (repealed); and PARA 44 post. As to the history of the regulatory structure for independent television services see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 328.

2 For these purposes, 'British protected person' had the same meaning as in the British Nationality Act 1981 (see BRITISH NATIONALITY, IMMIGRATION AND RACE RELATIONS vol 4(2) (2002 Reissue) PARA 72 et seq): Copyright Act 1956 s 1(5) (amended by the British Nationality (Modification of Enactments) Order 1982, SI 1982/1832, art 2; repealed).

3 As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq.

4 As to residence see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

5 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

6 Copyright Act 1956 s 1(5)(a) (repealed).

7 Ibid s 1(5)(b) (repealed). In relation to photographs taken, and sound recordings made, before 1 July 1957, a corporate body was a qualified person if, and only if, it had established a place of business in the country concerned: see s 50, Sch 7 para 39(4) (repealed).

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39. Meaning of 'publication'.

The protection given by the Copyright Act 1956 to a work or other subject matter could depend on whether the work or other subject matter had been published¹.

A literary, dramatic or musical work, or an edition of such a work, or an artistic work, was taken to have been published if, but only if, reproductions² of the work or edition had been issued to the public³. The performance⁴, or the issue of records, of a literary, dramatic or musical work, the exhibition of an artistic work, the construction of a work of architecture, and the issue of photographs or engravings of a work of architecture or of a sculpture, did not constitute publication of the work⁵. In relation to sound recordings, 'publication' meant the issue to the public of records embodying the recording or any part of it⁶. In relation to a cinematograph film, 'publication' meant the sale, letting on hire, or offer for sale or hire, of copies of the film to the public⁷.

A publication which was merely colourable⁸, and not intended to satisfy the reasonable requirements of the public was disregarded except for the purpose of infringement⁹.

A publication in the United Kingdom¹⁰, or in any other country, was not treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than 30 days¹¹. The period was 14 days in the case of publication before 1 June 1957¹².

In determining for the purpose of the Copyright Act 1956 whether a work or other subject matter had been published, or whether a publication was the first publication or whether it was published or otherwise dealt with in the lifetime of a person, no account was to be taken of any unauthorised publication or other unauthorised act¹³. Apart from the publication of reproductions which in certain circumstances was permitted¹⁴, a publication or other act was for this purpose taken to have been unauthorised if copyright subsisted in the work or other subject matter and the act was done otherwise than by or with the owner's licence or if there was no copyright and the act was done otherwise than by or with the licence of the author (or, in the case of a sound recording or a cinematograph film, or an edition of a literary, dramatic or musical work, the maker or publisher, as the case may be), or person claiming under him¹⁵.

1 As to the relevance of publication to copyright in different works and subject matters see PARAS 40-43, 46 post. Except in so far as the context otherwise required, any reference in the Copyright Act 1956 (repealed) to the doing of an act in relation to a work or other subject matter was to be taken to include the doing of that act in relation to a substantial part of the work or subject matter; and any reference to a reproduction, adaptation or copy of a work, or a record embodying a sound recording, was to be taken to include a reference to a reproduction, adaptation or copy of a substantial part of the work, or a record embodying a substantial part of the sound recording, as the case may be: s 49(1) (repealed). Section 49(1) (repealed) did not, however, affect the construction of any reference to the publication or absence of publication of a work for the purposes of s 2(1), (2) (repealed) (which related to literary, dramatic and musical works: see PARA 40 post), s 3(2), (3) (repealed) (which related to artistic works: see PARA 41 post), s 33(2), (3) (repealed) (which contained provisions relating to international organisations: see PARA 156 post), and s 39(2)-(4) (repealed) (which related to Crown copyright: see PARA 147 post): s 49(1) proviso (repealed).

2 For these purposes, 'reproduction', in the case of a literary, dramatic or musical work, included a reproduction in the form of a record or of a cinematographic film, and, in the case of an artistic work, included a version produced by converting the work into a three-dimensional form, or, if it was in three dimensions, by converting the work into a two-dimensional form; and references to reproducing a work were to be construed accordingly: *ibid* s 48(1) (repealed). For the meaning of 'literary work' see PARA 37 note 2 ante; for the meaning

of 'dramatic work' see PARA 37 note 3 ante; for the meaning of 'record' see PARA 37 note 7 ante; for the meaning of 'cinematograph film' see PARA 37 note 8 ante; and for the meaning of 'artistic work' see PARA 37 note 6 ante. 'Musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 post.

3 Copyright Act 1956 s 49(2)(c) (repealed). In determining for this purpose whether reproductions of a work or edition had been issued to the public, s 49(1) (repealed) (see note 1 supra) was not to apply: s 49(2) (repealed). The issue to the public of machine parts could constitute the publication of drawings from which those parts were manufactured: *British Northrop Ltd v Texteam Blackburn Ltd* [1974] RPC 57.

4 For these purposes, 'performance' included delivery, in relation to lectures, addresses, speeches and sermons and in general, subject to the Copyright Act 1956 s 48(5) (as amended; repealed), included any mode of visual or acoustic presentation, including any such presentation by the operation of wireless telegraphy apparatus, or by the exhibition of a cinematograph film, or by the use of a record, or by any other means; and references to performing a work or an adaptation of a work were to be construed accordingly: s 48(1) (repealed). Broadcasting or including a work or other subject matter in a cable programme was not to be taken to constitute a performance: see s 48(5) (amended by the Cable and Broadcasting Act 1984 s 57(1), Sch 5 para 6(24); repealed). 'Wireless telegraphy apparatus' had the same meaning as in the Wireless Telegraphy Act 1949 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 227): Copyright Act 1956 s 48(1) (repealed). For the meaning of 'cable programme' see PARA 37 note 11 ante; and for the meaning of 'performance' in the Copyright, Designs and Patents Act 1988 see PARA 324 post.

5 Copyright Act 1956 s 49(2)(a) (repealed).

6 Ibid s 12(9) (repealed). For the meaning of 'sound recording' see PARA 37 note 7 ante.

7 Ibid s 13(10) (repealed).

8 'Colourable' is the antithesis of bona fide: *Etherington v Wilson* (1875) 1 ChD 160 at 166, CA, per James LJ. If the smallness of the number of copies placed on sale is due to the fact that in all good faith only a small sale is expected, the publication is not colourable: *Francis, Day and Hunter v Feldman & Co* [1914] 2 Ch 728, CA.

9 Copyright Act 1956 s 49(2)(b) (repealed).

10 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

11 Copyright Act 1956 s 49(2)(d) (repealed).

12 Ibid s 50(1), Sch 7 para 33(1) (repealed).

13 Ibid s 49(3) (repealed); cf *Bodley Head Ltd v Flegon* [1972] 1 WLR 680 (alleged clandestine circulation in Russia of typewritten copies of novel).

14 See the Copyright Act 1956 s 7(7) (repealed); and PARA 362 post.

15 Ibid s 49(3)(c) (repealed). In the application of s 49(3) (repealed) to an act done before 1 July 1957, references to copyright included references to copyright under the Copyright Act 1911; and, in relation to that copyright, references to the licence of the owner were references to the consent or acquiescence of the owner: Copyright Act 1956 s 50(1), Sch 7 para 33(2) (repealed).

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(B) WORKS WITHIN PART I OF THE COPYRIGHT ACT 1956

40. Literary, dramatic and musical works.

Copyright subsisted in every original¹ literary², dramatic³ or musical work⁴, or an adaptation⁵ of such a work⁶ which was unpublished⁷ and of which the author was a qualified person⁸ at the time when the work was made or, if the making of the work extended over a period, was a qualified person for a substantial part of that period⁹. Copyright also subsisted (or, if there was copyright in the work immediately before publication, continued to subsist) in such works if they had been published if, but only if, the first publication took place in the United Kingdom¹⁰ or another country to which the relevant provision¹¹ of the Copyright Act 1956 extended¹², or, in the case of works published after 31 May 1957¹³, if the author was a qualified person at the time when the work was first published, or, if he had died before that time, was a qualified person at the time of his death¹⁴. Provision was made for works published anonymously and pseudonymously¹⁵ and for works of joint authorship¹⁶. The publication of editions of literary, dramatic and musical works was protected, in certain circumstances by copyright¹⁷, in addition to any copyright in the work itself¹⁸.

None of the above provisions as to the subsistence of copyright¹⁹ applied to works published before 1 July 1912 unless a right conferred by the Copyright Act 1911 subsisted in the work immediately before 1 June 1957²⁰.

1 For the meaning of 'originality' in relation to the same requirement in the Copyright, Designs and Patents Act 1988 see PARA 65 post.

2 For the meaning of 'literary work' see PARA 37 note 2 ante.

3 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

4 'Musical work' was not defined in the Copyright Act 1956. For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 post.

5 For the meaning of 'adaptation' see PARA 37 note 5 ante.

6 Copyright Act 1956 s 2(5) (repealed).

7 For the meaning of 'publication' see PARA 39 ante.

8 As to the qualification of the author see PARA 38 ante.

9 Copyright Act 1956 s 2(1) (repealed). References to the time at which, or the period during which, a literary, dramatic or musical work was made were references to the time or period at or during which it was first reduced to writing or some other material form: s 49(4) (repealed).

10 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

11 I.e the Copyright Act 1956 s 2 (repealed).

12 Ibid s 2(2)(a) (repealed). As to the duration of copyright in literary, dramatic and musical works see PARA 47 post; and as to the extension of the provisions of the Copyright Act 1956 (repealed) see PARA 52 post.

13 See ibid s 50(1), Sch 7 Pt I PARA 1 (repealed).

14 Ibid s 2(2)(b), (c) (repealed).

15 See ibid s 11(1), Sch 2 (repealed); and PARA 49 post.

16 See ibid s 11(2), Sch 3 (repealed); and PARA 50 post. In relation to a work of joint authorship, the references to the author in s 2(1), (2) were to be construed as references to any one or more of the authors: Sch 3 para 1 (repealed). For the meaning of 'work of joint authorship' see PARA 37 note 26 ante.

17 See ibid s 15 (repealed); and PARA 46 post.

18 See ibid s 16(6) (repealed).

19 See ibid s 2(1), (2) (repealed).

20 See ibid Sch 7 paras 34, 35 (repealed). As to copyright under the Copyright Act 1911 see PARA 28 et seq ante.

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41. Artistic works.

Subject to the provisions of the Copyright Act 1956, copyright existed in all original¹ artistic works² which were unpublished³ and of which the author was a qualified person⁴ at the time when the work was made or, if the making of the work extended over a period, was a qualified person for a substantial part of that period⁵. Copyright also subsisted (or, if there had been copyright in the work immediately before publication, continued to subsist) in an artistic work after it had been published if, but only if, the first publication of the work took place in the United Kingdom⁶ or another country to which the relevant provision of the Copyright Act 1956⁷ extended⁸, or, in the case of works published after 31 May 1957⁹, if the author was a qualified person at the time when the work was first published or, if he died before that time, was a qualified person immediately before his death¹⁰. Provision was made for works published anonymously and pseudonymously¹¹ and for works of joint authorship¹².

None of the above provisions as to the subsistence of artistic copyright¹³ applied to works published before 1 July 1912 unless a right conferred by the Copyright Act 1911 subsisted in the work immediately before 1 June 1957¹⁴.

1 For the meaning of 'originality' in relation to the same requirement in the Copyright, Designs and Patents Act 1988 see PARA 65 post.

2 For the meaning of 'artistic work' see PARA 37 note 6 ante.

3 For the meaning of 'publication' see PARA 39 ante.

4 As to the qualification of the author see PARA 38 ante.

5 Copyright Act 1956 s 3(2) (repealed).

6 See *British Northrop Ltd v Texteam Blackburn Ltd* [1974] RPC 57 (drawing of machine parts published when and where reproduction in the form of parts put on offer). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

7 In the Copyright Act 1956 s 3 (repealed).

8 Ibid s 3(3)(a) (repealed). As to the duration of copyright in artistic works see PARA 48 post; and as to the extension of the provisions of the Copyright Act 1956 (repealed) see PARA 52 post.

9 See ibid s 50(1), Sch 7 para 1 (repealed).

10 Ibid s 3(3)(b), (c) (repealed).

11 See ibid s 11(1), Sch 2 (repealed); and PARA 49 post.

12 See ibid s 11(2), Sch 3 (repealed); and PARA 50 post. In relation to a work of joint authorship, the references to the author in s 3(2), (3) were to be construed as referring to any one or more of the authors: Sch 3 para 1 (repealed). For the meaning of 'work of joint authorship' see PARA 37 note 26 ante.

13 See ibid s 3(2), (3) (repealed).

14 Ibid Sch 7 para 35 (repealed). As to copyright under the Copyright Act 1911 see PARA 28 et seq ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(iv) Law under the Copyright Act 1956/B. SUBJECT MATTER AND CONDITIONS OF COPYRIGHT/(C) Subject Matter within Part II of the Copyright Act 1956/42. Sound recordings.

(C) SUBJECT MATTER WITHIN PART II OF THE COPYRIGHT ACT 1956

42. Sound recordings.

Copyright subsisted in every sound recording¹ of which the maker² was a qualified person³ at the time when the recording was made and in every sound recording which had been published⁴, if the first publication of the recording took place in the United Kingdom⁵ or in another country to which the provision extended⁶.

1 For the meaning of 'sound recording' see PARA 37 note 7 ante.

2 The maker of a sound recording was the person who owned the first record embodying the recording at the time when the recording was made: Copyright Act 1956 s 12(8) (repealed). For the meaning of 'record' see PARA 37 note 7 ante.

3 As to the qualification of the author see PARA 38 ante.

4 For the meaning of 'publication' see PARA 39 ante.

5 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

6 Copyright Act 1956 s 12(1), (2) (repealed). As to the duration of copyright in sound recordings see PARA 51 post; and as to the extension of the provisions of the Copyright Act 1956 see PARA 52 post. A sound recording was taken to be made at the time when the first record embodying the recording was produced: s 12(8) (repealed). Notwithstanding anything in s 12 (repealed), copyright did not subsist by virtue of s 12 (repealed) in a sound recording made before 1 July 1912 (ie the date on which the Copyright Act 1911 came into force in the United Kingdom: see PARA 30 ante) unless, immediately before 1 June 1957 (ie the date on which the Copyright Act 1956 (repealed) came into force in the United Kingdom: see PARA 35 ante), a corresponding copyright subsisted by virtue of the Copyright Act 1911 s 19(8) (repealed) (see PARA 28 ante), which related to records made before the commencement of that Act: see the Copyright Act 1956 s 50(1), Sch 7 para 13 (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(iv) Law under the Copyright Act 1956/B. SUBJECT MATTER AND CONDITIONS OF COPYRIGHT/(C) Subject Matter within Part II of the Copyright Act 1956/43. Films.

43. Films.

Copyright subsisted in every cinematograph film¹ made on or after 1 June 1957² of which the maker³ was a qualified person⁴ for the whole or a substantial part of the period during which the film was made, and in every cinematograph film which had been published if the first publication⁵ of the film took place in the United Kingdom⁶ or in another country to which the provision extended⁷. No copyright existed in a film made before the commencement of the Copyright Act 1956⁸, except in so far as it enjoyed copyright as an original dramatic work⁹ or as a collection of photographs¹⁰.

1 For the meaning of 'cinematograph film' see PARA 37 note 8 ante.

2 The date on which the Copyright Act 1956 (repealed) came into force in the United Kingdom: see PARA 35 ante.

3 For these purposes, the maker of a cinematograph film was the person by whom the arrangements necessary for making the film were undertaken: *ibid* s 13(10) (repealed).

4 As to the qualification of the maker see PARA 38 ante.

5 For the meaning of 'publication' see PARA 39 ante.

6 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

7 Copyright Act 1956 s 13(1), (2) (repealed). As to the duration of copyright in films see PARA 51 post; and as to the extension of the provisions of the Copyright Act 1956 see PARA 52 post.

8 *Ibid* s 50(1), Sch 7 para 14 (repealed). The treatment of such films is preserved by the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 7: see PARA 85 post.

9 Copyright Act 1956 Sch 7 para 15 (repealed).

10 *Ibid* Sch 7 para 16. For these purposes, 'photograph' meant a photo-lithograph and any work produced by any process analogous to photography: Sch 7 para 47(1), Sch 8 para 9 (repealed).

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44. Broadcasts.

Copyright subsisted in television¹ and sound² broadcasts made³ on or after 1 June 1957⁴ by the British Broadcasting Corporation or by the Independent Broadcasting Authority⁵ from a place in the United Kingdom⁶ or from a place in any other country to which the relevant provision⁷ extended⁸. There was power to extend the enactments relating to television broadcasts or to sound broadcasts in relation to other broadcasting bodies⁹. This power was exercised so as to give copyright protection in the United Kingdom to television and sound broadcasts made by lawfully authorised broadcasting authorities in any country to which the relevant provision¹⁰ was extended¹¹ as part of the law of that country¹². In so far as a television broadcast or a sound broadcast was a repetition, whether the first or any subsequent repetition, of a television or sound broadcast previously made by the British Broadcasting Corporation or by the Independent Broadcasting Authority and was made by broadcasting material recorded on film, records or otherwise, copyright did not subsist in it¹³ if it was made after the end of the period of copyright protection of the original broadcast¹⁴; and, if it was made before the end of that period, any copyright subsisting in it expired at the end of that period¹⁵.

There was no copyright in a sound or television broadcast as such if it was made before 1 June 1957¹⁶.

1 For the meaning of 'television broadcast' see PARA 37 note 10 ante.

2 For the meaning of 'sound broadcast' see PARA 37 note 9 ante.

3 For these purposes, a television broadcast or sound broadcast was to be taken to be made by the body by which, at the time when, and from the place from which, the visual images or sounds in question, or both, were broadcast: Copyright Act 1956 s 14(1) (repealed).

4 Ie the date on which the Copyright Act 1956 (repealed) came into force in the United Kingdom: see PARA 35 ante.

5 As to the British Broadcasting Corporation see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 306 et seq; and as to the Independent Broadcasting Authority see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 328.

6 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

7 Ie the Copyright Act 1956 s 14 (repealed).

8 Ibid s 14(1) (repealed); Independent Broadcasting Authority Act 1973 s 38 (repealed); Broadcasting Act 1981 s 65(3), Sch 8 para 7 (repealed). As to the duration of copyright in broadcasts see PARA 51 post; and as to the extension of the provisions of the Copyright Act 1956 see PARA 52 post.

9 Ie ibid s 34 (repealed), which empowered Her Majesty by Order in Council to provide that, subject to such exceptions and modifications, if any, as might be specified in the Order, such provisions of the Copyright Act 1956 relating to television broadcasts or to sound broadcasts as might be so specified should apply in relation to the operation of wireless telegraphy apparatus by way of the emission, as opposed to reception, of electromagnetic energy by such persons or classes of persons, other than the British Broadcasting Corporation or the Independent Broadcasting Authority, as might be specified in the order and for such purposes, whether involving broadcasting or not, as might be so specified, as they applied in relation to television broadcasts or, as the case might be, to sound broadcasts, made by the Corporation or the Authority. For the meaning of 'wireless telegraphy apparatus' see PARA 39 note 4 ante.

10 Ie the Copyright Act 1956 s 14 (repealed).

- 11 Ie by Order in Council made under *ibid* s 31 (repealed): see PARA 52 post.
- 12 See the Copyright (Broadcasting Organisations) Order 1961, SI 1961/2460 (revoked).
- 13 Ie by virtue of the Copyright Act 1956 s 14 (repealed).
- 14 See PARA 51 post.
- 15 Copyright Act 1956 s 14(3) (repealed); Independent Broadcasting Authority Act 1973 s 38 (repealed); Broadcasting Act 1981 Sch 8 para 7 (repealed). For this purpose, a previous television or sound broadcast was to be disregarded if made before 1 June 1957: Copyright Act 1956 s 50(1), Sch 7 para 18 (repealed).
- 16 *Ibid* Sch 7 para 17 (repealed).

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45. Cable programmes.

Copyright subsisted in cable programmes¹ included in a cable programme service² provided by a qualified person³ in the United Kingdom⁴ or any other country to which the relevant provision⁵ extended⁶. Copyright did not, however, subsist in a cable programme if the programme was included in the cable programme service by the reception and immediate retransmission of a television broadcast⁷ or a sound broadcast⁸. There was no copyright in a cable programme included in a cable programme service before 1 January 1985⁹.

1 For the meaning of 'cable programme' see PARA 37 note 11 ante.

2 For the meaning of 'cable programme service' see PARA 37 note 12 ante.

3 As to the qualification of the maker see PARA 38 ante.

4 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

5 I.e. the Copyright Act 1956 s 14A (as added; repealed).

6 Ibid s 14A(1) (s 14A added by the Cable and Broadcasting Act 1984 s 22; repealed). As to the duration of copyright in a cable programme see PARA 51 post; and as to the extension of the provisions of the Copyright Act 1956 see PARA 52 post.

7 For the meaning of 'television broadcast' see PARA 37 note 10 ante.

8 Copyright Act 1956 s 14A(2) (as added (see note 6 supra); repealed). For the meaning of 'sound broadcast' see PARA 37 note 9 ante.

9 I.e. the date on which the Copyright Act 1956 s 14A (as added; repealed) came into force: see the Cable and Broadcasting Act 1984 (Commencement No 1) Order 1984, SI 1984/1796, art 2, Sch 2. This exclusion is continued by the Copyright, Designs and Patents Act 1988: see s 170, Sch 1 para 9(b); and PARA 104 post.

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46. Published editions.

Copyright subsisted in every published edition of any one or more literary¹, dramatic² or musical³ works in the case of which either the first publication⁴ took place in the United Kingdom⁵ or in another country to which the relevant provision⁶ extended, or the publisher of the edition was a qualified person⁷ at the date of the first publication⁸.

1 For the meaning of 'literary work' see PARA 37 note 2 ante.

2 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

3 The expression 'musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 post.

4 For the meaning of 'publication' see PARA 39 ante.

5 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

6 I.e. the Copyright Act 1956 s 15 (repealed).

7 As to the qualification of the publisher see PARA 38 ante.

8 Copyright Act 1956 s 15(1) (repealed). Section 15(1) (repealed) did not apply to an edition which reproduced the typographical arrangement of a previous edition of the same work or works: s 15(1) proviso (repealed). As to the duration of copyright in published editions see PARA 51 post; and as to the extension of the provisions of the Copyright Act 1956 see PARA 52 post.

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(D) DURATION OF COPYRIGHT

47. Literary, dramatic and musical works.

Copyright in literary¹, dramatic² and musical³ works subsisted under the Copyright Act 1956 until the end of the period of 50 years from the end of the calendar year in which the author died⁴. If, however, neither the publication⁵ of the work nor the performance⁶ of the work in public, nor the offer for sale to the public of records⁷ of the work, nor the broadcasting⁸ of the work, nor its inclusion in a cable programme⁹, took place before the death of the author, the copyright subsisted until the end of the period of 50 years from the end of the calendar year in which the earliest of those acts was done¹⁰.

1 For the meaning of 'literary work' see PARA 37 note 2 ante.

2 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

3 The expression 'musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 post.

4 Copyright Act 1956 s 2(3) (repealed). Section 2(3) (repealed) was subject to s 2(2) (repealed) (see PARA 40 ante): s 2(3) (repealed). As to the duration of Crown copyright in such works see PARA 147 post. As to anonymous and pseudonymous works see PARA 49 post; and as to works of joint authorship see PARA 50 post.

5 For the meaning of 'publication' see PARA 39 ante.

6 For the meaning of 'performance' see PARA 39 note 4 ante.

7 For the meaning of 'record' see PARA 37 note 7 ante.

8 References in the Copyright Act 1956 (repealed) to broadcasting were references to broadcasting by wireless telegraphy (within the meaning of the Wireless Telegraphy Act 1949: see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 227) whether by way of sound broadcasting or of television: Copyright Act 1956 s 48(2) (repealed).

9 Ibid s 2(3)(e) (added by the Cable and Broadcasting Act 1984 s 57, Sch 5 para 6(1); repealed). For the meaning of 'cable programme' see PARA 37 note 11 ante.

10 Copyright Act 1956 s 2(3) proviso (repealed). For this purpose, the doing of an act in relation to an adaptation of a work was treated as the doing of the act in relation to the work: s 2(4) (repealed). For the meaning of 'adaptation' see PARA 37 note 5 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(iv) Law under the Copyright Act 1956/B. SUBJECT MATTER AND CONDITIONS OF COPYRIGHT/(D) Duration of Copyright/48. Artistic works.

48. Artistic works.

Copyright in artistic works¹ subsisted until the end of the period of 50 years from the end of the calendar year in which the author died², except in the case of photographs³ and certain engravings⁴. Copyright in a photograph subsisted until the end of the period of 50 years from the end of the calendar year in which the photograph was first published⁵ (or, in the case of a photograph taken before 1 June 1957, taken⁶). Copyright in an engraving, where it had not been published before the author's death, subsisted until the end of the period of 50 years from the end of the calendar year in which it was first published⁷.

1 For the meaning of 'artistic work' see PARA 37 note 6 ante.

2 Copyright Act 1956 s 3(4) (repealed). As to the duration of Crown copyright in such works see PARA 147 post. As to anonymous and pseudonymous works see PARA 49 post; and as to works of joint authorship see PARA 50 post.

3 For the meaning of 'photograph' see PARA 37 note 6 ante.

4 For the meaning of 'engraving' see PARA 37 note 6 ante.

5 Copyright Act 1956 s 3(4) proviso (b) (repealed). For the meaning of 'publication' see PARA 39 ante.

6 Ibid s 50(1), Sch 7 Pt I para 2 (repealed). For the meaning of 'photograph' for this purpose see PARA 43 note 10 ante.

7 Ibid s 3(4) proviso (a) (repealed).

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49. Anonymous and pseudonymous works.

Where the first publication¹ of a literary², dramatic³ or musical⁴ work, or of an artistic work⁵ other than a photograph⁶, was anonymous or pseudonymous, the copyright expired at the end of 50 years from the end of the year of first publication⁷. This did not apply if at any time before the end of that period it was possible for a person without previous knowledge of the facts to find out the identity of the author by reasonable inquiry⁸. The publication of a work under two or more names was not taken to be pseudonymous unless all those names were pseudonymous⁹.

1 For the meaning of 'publication' see PARA 39 ante.

2 For the meaning of 'literary work' see PARA 37 note 2 ante.

3 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

4 The expression 'musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 post.

5 For the meaning of 'artistic work' see PARA 37 note 6 ante.

6 The duration of copyright in a photograph was not dependent on the date of the death of the maker: see PARA 48 ante. For the meaning of 'photograph' see PARA 37 note 6 ante.

7 Copyright Act 1956 s 11(1), Sch 2 para 1 (repealed).

8 Ibid Sch 2 para 2 (repealed).

9 Ibid Sch 2 para 3 (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/1. INTRODUCTION/(3) EVOLUTION OF COPYRIGHT LAW/(iv) Law under the Copyright Act 1956/B. SUBJECT MATTER AND CONDITIONS OF COPYRIGHT/(D) Duration of Copyright/50. Joint authorship.

50. Joint authorship.

In relation to a work of joint authorship¹, references to the author in relation to the calculation of periods of time from his death² had in general to be construed as references to the author who died last³. Where, however, the work was first published⁴ under two or more names, of which one or more (but not all) was or were pseudonymous or the work was first published under two or more names all of which were pseudonymous and at any time within the period of 50 years from the end of the calendar year in which the work was first published it was possible for a person without previous knowledge of the facts to ascertain the identity of any one or more of the authors by reasonable inquiry, then certain references to the author⁵ had to be construed as references to the author whose identity was disclosed, or, if the identity of two or more of the authors was disclosed, as references to that one who died last⁶. The identity of an author was taken to be disclosed if either, in his case, the name under which the work was published was not a pseudonym, or it was possible to ascertain his identity by reasonable inquiry as mentioned above⁷.

As the period of copyright in works of joint authorship under the Copyright Act 1956⁸ was longer than the period prescribed by the Copyright Act 1911⁹, it was provided that there was no copyright in such works first published before 1 June 1957 if the period of copyright had expired before that date¹⁰.

1 For the meaning of 'work of joint authorship' see PARA 37 note 26 ante.

2 See the Copyright Act 1956 s 2(3) (repealed) (see PARA 47 ante) and s 3(4) (repealed) (see PARA 48 ante).

3 Ibid s 11(2), Sch 3 para 2 (repealed).

4 For the meaning of 'publication' see PARA 39 ante.

5 ie the references in the Copyright Act 1956 ss 2(3), 3(4) (repealed).

6 Ibid Sch 3 para 3(1)-(3) (repealed).

7 Ibid Sch 3 para 3(4) (repealed).

8 See the text to note 2 supra; and PARAS 47-48 ante.

9 By the Copyright Act 1911 s 16(1) (repealed), copyright subsisted during the life of the author who first died and for 50 years after his death or during the life of the author who died last, whichever period was the longer.

10 Copyright Act 1956 s 50(1), Sch 7 para 10(1) (repealed). 'Period of copyright', in relation to such works first published before 1 June 1957, meant the life of the author who died first and 50 years thereafter, or the life of the author who died last, whichever was the longer: Sch 7 para 10(2) (repealed).

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51. Sound recordings, films, broadcasts, cable programmes and published editions.

Copyright in a sound recording¹ subsisted until the end of the period of 50 years from the end of the calendar year in which the recording was first published², unless the recording was made before 1 June 1957³ in which case the period was 50 years from the end of the calendar year in which the recording was made⁴.

Copyright in cinematograph films⁵, in the case of any film which was registered under a former enactment relating to the registration of films⁶, subsisted until the end of the period of 50 years from the end of the year in which it was registered⁷. The copyright in any other film subsisted until publication⁸ and continued thereafter until the end of the period of 50 years from the end of the calendar year which included the date of its first publication, or, if the copyright subsisted by virtue of publication, continued from the date of first publication until the end of the period of 50 years from the end of the calendar year which included that date⁹.

Copyright in sound¹⁰ and television¹¹ broadcasts continued until the end of the period of 50 years from the end of the calendar year in which the broadcast was made¹². This term was not extended by virtue of re-broadcasts, nor was the repetition of a broadcast protected after the copyright in the broadcast itself had expired¹³, but the first re-broadcast on or after 1 June 1957 vested an original copyright in the broadcast¹⁴.

Copyright in cable programmes¹⁵ included in a cable programme service¹⁶ subsisted until the end of the period of 50 years from the end of the calendar year in which the cable programme was so included¹⁷. Although a repeat cable programme obtained an independent copyright, provided that it was included in a cable programme service before the end of the period of 50 years from the end of the calendar year in which it was previously so included¹⁸, that copyright expired at the end of the period of copyright in the first protected cable programme¹⁹.

Copyright in published editions²⁰ of works continued until the end of the period of 25 years from the end of the calendar year in which the edition was first published²¹.

1 For the meaning of 'sound recording' see PARA 37 note 7 ante.

2 Copyright Act 1956 s 12(3) (repealed). The duration was the same where the copyright was owned by the Crown: see PARA 147 post. For the meaning of 'publication' in relation to a sound recording see PARA 39 ante.

3 I.e. the date on which the Copyright Act 1956 (repealed) came into force in the United Kingdom: see PARA 35 ante.

4 Ibid s 50(1), Sch 7 para 11 (repealed).

5 For the meaning of 'cinematograph film' see PARA 37 note 8 ante.

6 For these purposes, 'former enactments relating to the registration of films' meant the Films Act 1960 Pt II (ss 8-23) (repealed) or the Cinematograph Films Act 1938 Pt III (ss 22-33) (repealed): Copyright Act 1956 s 13(3) (repealed).

7 Ibid s 13(3)(a) (amended by the Films Act 1985 s 7, Sch 2; repealed). A person who after copyright in a cinematograph film had expired caused the film to be seen, or seen and heard, in public did not thereby infringe any copyright subsisting in any literary, dramatic, musical or artistic work: Copyright Act 1956 s 13(7) (repealed).

8 For the meaning of 'publication' in relation to a cinematograph film see PARA 39 ante.

9 Copyright Act 1956 s 13(3)(b) (amended by the Films Act 1985 Sch 2; repealed). As to the effect of causing a film to be seen and heard after copyright had expired see note 7 *supra*.

10 For the meaning of 'sound broadcast' see PARA 37 note 9 *ante*.

11 For the meaning of 'television broadcast' see PARA 37 note 10 *ante*.

12 Copyright Act 1956 s 14(2) (repealed).

13 *Ibid* s 14(3) (repealed). A previous broadcast made before 1 June 1957 was disregarded: s 50(1), Sch 7 para 18 (repealed).

14 See *ibid* Sch 7 para 18 (repealed).

15 For the meaning of 'cable programme' see PARA 37 note 11 *ante*.

16 For the meaning of 'cable programme service' see PARA 37 note 12 *ante*.

17 Copyright Act 1956 s 14A(3) (s 14A added by the Cable and Broadcasting Act 1985 s 22; repealed).

18 Copyright Act 1956 s 14A(4)(a) (as added (see note 17 *supra*); repealed).

19 *Ibid* s 14A(4)(b) (as added (see note 17 *supra*); repealed).

20 The expression 'published edition' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'published edition' in the Copyright, Designs and Patents Act 1988 see PARA 92 *post*.

21 Copyright Act 1956 s 15(2) (repealed). For the meaning of 'publication' in relation to a published edition see PARA 39 *ante*.

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(E) EXTENSION AND APPLICATION OF THE COPYRIGHT ACT 1956

52. Extension to areas within jurisdiction.

Her Majesty had power by Order in Council to direct that any of the provisions of the Copyright Act 1956¹ should extend, subject to any exceptions or modifications, to the Isle of Man, any of the Channel Islands, any colony², any country outside Her Majesty's dominions in which for the time being Her Majesty had jurisdiction and any country consisting partly of one or more colonies and partly of any countries outside Her Majesty's dominions in which for the time being Her Majesty had jurisdiction³. Where, however, a country to which the Act had been so extended became a party to either the Berne⁴ or the Universal Copyright⁵ Conventions, the Copyright Act 1956 was applied with retrospective effect to that country by a further Order in Council⁶ which impliedly revoked the Order extending the Act to that country.

The legislature of any country to which any provisions of the Copyright Act 1956 had been extended could modify or add to those provisions, in their operation as part of the law of that country, in such manner as that legislature might consider necessary to adapt the provisions to the circumstances of that country⁷.

If a provision of the Copyright Act 1956 had not been extended to a country to which the Copyright Act 1911 extended (or was to be treated as extended), it was to be construed as if it had been so extended with respect to any time before the provision was in fact so extended whether before or after an extension order had been made⁸.

1 Orders in Council made under the Copyright Act 1956 (repealed) could be extended in the same way that the provisions of the Act could be extended by Order in Council: s 31(2) (repealed).

2 For the meaning of 'colony' see PARA 3 note 7 ante.

3 Copyright Act 1956 s 31(1) (repealed). As to the orders made see the Copyright (Sarawak) Order 1959, SI 1959/2215 (spent); the Copyright (Gibraltar) Order 1960, SI 1960/847 (revoked); the Copyright (Fiji) Order 1961, SI 1961/60 (spent); the Copyright (Uganda) Order 1961, SI 1961/2462 (spent); the Copyright (Zanzibar) Order 1961, SI 1961/2463 (spent); the Copyright (Bermuda) Order 1962, SI 1962/1642 (revoked); the Copyright (North Borneo) Order 1962, SI 1962/1643 (spent); the Copyright (Bahamas) Order 1962, SI 1962/2184 (spent); the Copyright (Virgin Islands) Order 1962, SI 1962/2185 (amended by SI 1985/1988) (see PARA 445 note 12 post); the Copyright (Falkland Islands) Order 1963, SI 1963/1037 (see PARA 445 note 12 post); the Copyright (St Helena) Order 1963, SI 1963/1038 (see PARA 445 note 12 post); the Copyright (Seychelles) Order 1963, SI 1963/1039 (spent); the Copyright (Kenya) Order 1963, SI 1963/1147 (spent); the Copyright (Mauritius) Order 1964, SI 1964/689 (spent); the Copyright (Montserrat) Order 1965, SI 1965/1858 (amended by SI 1985/1987) (see PARA 445 note 12 post); the Copyright (St Lucia) Order 1965, SI 1965/1859 (spent); the Copyright (Bechuanaland) Order 1965, SI 1965/2009 (spent); the Copyright (Cayman Islands) Order 1965, SI 1965/2010 (see PARA 445 note 12 post); the Copyright (Grenada) Order 1965, SI 1965/2158 (spent); the Copyright (British Guiana) Order 1966, SI 1966/79 (spent); the Copyright (British Honduras) Order 1966, SI 1966/685 (spent); the Copyright (Saint Vincent) Order 1967, SI 1967/974 (spent); the Copyright (Hong Kong) Order 1972, SI 1972/1724 (spent); the Copyright (British Indian Ocean Territory) Order 1984, SI 1984/541 (see PARA 445 note 12 post); and the Copyright (Isle of Man) Order 1986, SI 1986/1299 (revoked). See also the Copyright (Status of Former Dependent Territories) Order 1990, SI 1990/1512; and PARA 446 post.

4 I.e. the International Convention for the Protection of Literary and Artistic Works (Berne, 9 September 1886; TS 63 (1990); Cm 1212); see PARA 452 post.

5 I.e. the Universal Copyright Convention (Geneva, 6 September 1952; TS 9 (1975); Cmnd 5844); see PARA 452 post.

6 le under the Copyright Act 1956 s 32 (repealed): see PARA 53 post.

7 Ibid s 31(3) (repealed). No such modifications or additions, except in so far as they related to procedure and remedies were to be made so as to apply to any work or other subject matter in which copyright could subsist unless: (1) in the case of a literary, dramatic, musical or artistic work, the author of the work, or, in the case of a sound recording or a cinematograph film, the maker of the recording or film, was domiciled or resident in that country when, or during the period while, the work, recording or film was made; or (2) in the case of a published edition of a literary, dramatic or musical work, the publisher of the edition was domiciled or resident in that country at the date of its first publication; or (3) in the case of a literary, dramatic, musical or artistic work, or of a sound recording or a cinematograph film or a published edition, it was first published in that country; or (4) in the case of a television broadcast or sound broadcast, it was made from a place in that country; or (5) in the case of a cable programme service, it was sent from a place in that country: s 31(3) proviso (amended by the Cable and Broadcasting Act 1984 s 57(1), Sch 5 para 6(16); repealed). For the meaning of 'literary work' see PARA 37 note 2 ante; for the meaning of 'dramatic work' see PARA 37 note 3 ante; and for the meaning of 'artistic work' see PARA 37 note 6 ante. For the meaning of 'sound recording' see PARA 37 note 7 ante; and for the meaning of 'cinematograph film' see PARA 37 note 8 ante. For the meaning of 'sound broadcast' see PARA 37 note 9 ante; for the meaning of 'television broadcast' see PARA 37 note 10 ante; and for the meaning of 'cable programme service' see PARA 37 note 12 ante. For the meaning of 'publication' see PARA 39 ante. As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq; and as to residence see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

8 Copyright Act 1956 s 50, Sch 7 para 39(2) (repealed).

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53. Application to foreign countries.

Her Majesty had power by Order in Council to make provision for applying any of the provisions of the Copyright Act 1956¹ specified in the Order, in the case of a country² to which those provisions did not extend³, in any one or more of the following ways, that is to say so as to secure that those provisions:

- 1 (1) applied in relation to literary⁴, dramatic⁵, musical⁶ or artistic⁷ works, sound recordings⁸, cinematograph films⁹ or editions first published¹⁰ in that country as they applied in relation to literary, dramatic, musical or artistic works, sound recordings, cinematograph films or editions first published in the United Kingdom¹¹;
- 2 (2) applied in relation to persons who at a material time were citizens or subjects of that country as they applied in relation to persons who at such a time were British subjects¹²;
- 3 (3) applied in relation to persons who at a material time were domiciled¹³ or resident¹⁴ in that country as they applied in relation to persons who at such time were domiciled or resident in the United Kingdom¹⁵;
- 4 (4) applied in relation to bodies incorporated under the laws of that country as they applied in relation to bodies incorporated under the laws of any part of the United Kingdom¹⁶;
- 5 (5) applied in relation to television broadcasts¹⁷ and sound broadcasts¹⁸ made from places in that country, by one or more organisations constituted in, or under the laws of, that country, as they applied in relation to television broadcasts and sound broadcasts made from places in the United Kingdom by the British Broadcasting Corporation or the Independent Broadcasting Authority¹⁹;
- 6 (6) applied in relation to cable programmes²⁰ sent from places in that country as they applied in relation to cable programmes sent from places in the United Kingdom²¹.

All the Orders in Council made under these provisions have now been revoked²².

1 The Copyright Act 1956 (repealed).

2 An Order in Council could apply the provisions in question, but subject to exceptions or modifications specified in the Order and could direct that the provisions in question should so apply either generally or in relation to such classes of works, or other classes of cases, as might be specified in the Order: Copyright Act 1956 s 32(2) (repealed).

3 Her Majesty could not make an Order in Council applying any of the provisions of the Copyright Act 1956 in the case of a country, other than a country which was a party to a Convention relating to copyright to which the United Kingdom was also a party, unless Her Majesty was satisfied that, in respect of the class of works or other subject matter to which those provisions related, provision had been or would be made under the laws of that country whereby adequate protection would be given to owners of copyright under the Copyright Act 1956: s 32(3) (repealed). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

4 For the meaning of 'literary work' see PARA 37 note 2 ante.

5 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

- 6 The expression 'musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 post.
- 7 For the meaning of 'artistic work' see PARA 37 note 6 ante.
- 8 For the meaning of 'sound recording' see PARA 37 note 7 ante.
- 9 For the meaning of 'cinematograph film' see PARA 37 note 8 ante.
- 10 The expression 'published edition' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'published edition' in the Copyright, Designs and Patents Act 1988 see PARA 92 post.
- 11 Copyright Act 1956 s 32(1)(a) (repealed).
- 12 Ibid s 32(1)(b) (repealed). For the meaning of 'British subject' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 66 et seq.
- 13 As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq.
- 14 As to residence see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.
- 15 Copyright Act 1956 s 32(1)(c) (repealed).
- 16 Ibid s 32(1)(d) (repealed).
- 17 For the meaning of 'television broadcast' see PARA 37 note 10 ante.
- 18 For the meaning of 'sound broadcast' see PARA 37 note 9 ante.
- 19 Copyright Act 1956 s 32(1)(e) (repealed). As to the British Broadcasting Corporation see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 306 et seq; and as to the history of the regulatory structure for independent television services see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 328.
- 20 For the meaning of 'cable programme' see PARA 37 note 11 ante.
- 21 Copyright Act 1956 s 32(1)(f) (added by the Cable and Broadcasting Act 1984 s 57(1), Sch 5 para 6(17); repealed); Independent Broadcasting Authority Act 1973 s 38 (repealed); Broadcasting Act 1981 s 65(3), Sch 8 para 7 (repealed).
- 22 See the Copyright International Conventions Order 1979, SI 1979/1715; the Copyright (Taiwan) Order 1985, SI 1985/1777; and the Copyright (Singapore) Order 1987, SI 1987/940 (all revoked by SI 1989/1293).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/(i) In general/54. The Copyright, Designs and Patents Act 1988.

2. COPYRIGHT

(1) SCOPE OF COPYRIGHT

(i) In general

54. The Copyright, Designs and Patents Act 1988.

The Copyright, Designs and Patents Act 1988, which came into force for all purposes on 1 August 1989¹, repealed the whole of the Copyright Act 1956². Part I of the Copyright, Designs and Patents Act 1988³ restates and amends the law of copyright, that is, the provisions of the Copyright Act 1956 as amended⁴. A provision of Part I of the Copyright, Designs and Patents Act 1988 which corresponds to a provision of the previous law is not to be construed as departing from the previous law merely because of a change of expression⁵. Decisions under the previous law may be referred to for the purpose of establishing whether a provision of Part I of the Copyright, Designs and Patents Act 1988 departs from the previous law, or otherwise for establishing the true construction of that Part⁶.

Part I of the Copyright, Designs and Patents Act 1988 governs copyright and moral rights and relates to:

- 7 (1) subsistence⁷, ownership⁸ and duration⁹;
- 8 (2) rights of copyright owners¹⁰;
- 9 (3) acts permitted in relation to copyright works¹¹;
- 10 (4) moral rights¹²;
- 11 (5) dealings with rights in copyright works¹³;
- 12 (6) remedies for infringement¹⁴ and criminal offences¹⁵;
- 13 (7) copyright licensing¹⁶;
- 14 (8) the Copyright Tribunal¹⁷;
- 15 (9) qualification for and the extent of copyright protection¹⁸; and
- 16 (10) Crown and Parliamentary copyright¹⁹, international organisations²⁰, transitional provisions and savings²¹ and interpretation²².

Part I of the Copyright, Designs and Patents Act 1988 extends to England and Wales, Scotland and Northern Ireland²³.

1 See the Copyright, Designs and Patents Act 1988 (Commencement No 1) Order 1989, SI 1989/816, art 2 (amended by SI 1989/1303). Certain provisions of the Copyright, Designs and Patents Act 1988 had been brought into force on 9 June 1989 for the purpose only of making regulations, orders, Orders in Council or rules: see the Copyright, Designs and Patents Act 1988 (Commencement No 2) Order 1989, SI 1989/955, art 2; and the Copyright, Designs and Patents Act 1988 (Commencement No 3) Order 1989, SI 1989/1032, art 2, Schedule. The Copyright, Designs and Patents Act 1988 s 301, Sch 6 (provisions for the benefit of the Hospital for Sick Children, Great Ormond Street, London: see PARAS 143, 299 post) came into force on 15 November 1988: s 305(1).

2 Ibid s 303(2), Sch 8.

3 Ie ibid Pt I (ss 1-179) (as amended): see PARA 55 et seq post.

4 Ibid s 172(1). Section 170, Sch 1 sets out the modified application of the Act to works made before 1 August 1989. The main purpose of s 172 is to provide for the continued applicability of case law decided under the enactments relating to copyright repealed by s 302(2), Sch 8. When the Bill for the Copyright, Designs and Patents Act 1988 was being considered in Committee in the House of Lords, the government spokesman explained the relevant clause in the following terms: 'One of the functions of the Bill is to restate large parts of the existing law unchanged but in a much plainer and more easily understood form. The danger of such a restatement of the law in different language is that the courts will assume that the use of different language necessarily means that the law has changed . . . We do not want to throw away large chunks of helpful jurisprudence where the law is unchanged. Equally, we want to be able to take advantage of that jurisprudence for the purpose of construing the law and deciding whether it has in fact changed . . . The language of the Bill is generally simpler than that of the [Copyright Act 1956]. The changes in wording are not to be construed as leading to a change of meaning. Examples are the change from cinematograph film simply to film and the wording of the exceptions relating to libraries. The point of the word 'merely' [in the Copyright, Designs and Patents Act 1988 s 172(2)] is that a change of wording is by itself not to lead to a change of meaning if the ordinary meaning of a new word is the same as that of the old word. In other words, the court is not to search for a change of meaning just because of a change of words where a change of meaning is not in fact apparent': see 491 HL Official Report (5th series) cols 567, 569. In interpreting Acts of Parliament, reference to parliamentary materials is allowed where: (1) legislation is ambiguous or obscure or the literal meaning leads to an absurdity; (2) the material relied on consists of statements by a minister or other promoter of the Bill which leads to the enactment of the legislation together, if necessary, with such other Parliamentary material as is necessary to understand such statements and their effect; and (3) the statements relied on are clear: *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1993] 1 All ER 42, HL; and see STATUTES vol 44(1) (Reissue) PARA 1421.

5 Copyright, Designs and Patents Act 1988 s 172(2). See also note 4 supra.

6 Ibid s 172(3). See also note 4 supra.

7 le ibid ss 1-8 (as amended): see PARA 57 et seq post.

8 le ibid ss 9-11 (as amended): see PARA 109 et seq post.

9 le ibid ss 12-15A (as amended): see PARA 93 et seq post.

10 le ibid Pt I Ch II (ss 16-27) (as amended): see PARA 311 et seq post.

11 le Ibid Pt I Ch III (ss 28-76) (as amended): see PARAS 337 et seq, 734 post.

12 le ibid Pt I Ch IV (ss 77-89) (as amended) and ss 94, 103: see PARA 455 et seq post.

13 le ibid Pt I Ch V (ss 90-95) (as amended): see PARA 158 et seq post.

14 le ibid ss 96-106, 111-115 (as amended): see PARA 410 et seq post.

15 le ibid ss 107-110 (as amended): see PARA 437 et seq post.

16 le ibid Pt I Ch VII (ss 116-144A) (as amended): see PARAS 182 et seq, 223 et seq post.

17 le ibid Pt I Ch VIII (ss 145-152) (as amended): see PARA 207 et seq post.

18 le ibid ss 153-162: see PARAS 3 ante, 59 et seq, 444, 447, 454 post.

19 le ibid ss 163-167: see PARA 144 et seq post.

20 le ibid ss 168, 169: see PARA 155 et seq post.

21 le ibid ss 170, 171: see PARAS 57, 64 post.

22 le ibid ss 172-179 (as amended).

23 See ibid s 157(1); and PARA 443 post.

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55. Continuity of copyright legislation.

The copyright provisions in the Copyright, Designs and Patents Act 1988¹ have effect for securing the continuity of the law so far as its provisions re-enact, with or without modification, earlier provisions².

Subject to any specific transitional provision or saving and to any express amendment made by the Copyright, Designs and Patents Act 1988³:

- 17 (1) reference in an enactment⁴, instrument or other document to copyright, or to a work or other subject matter⁵ in which copyright subsists, which apart from the Copyright, Designs and Patents Act 1988 would be construed as referring to copyright under the Copyright Act 1956 is to be construed, so far as may be required for continuing its effect, as being, or as the case may require, including, a reference to copyright under the Copyright, Designs and Patents Act 1988 or to works in which copyright subsists under that Act⁶;
- 18 (2) anything done, including subordinate legislation made, or having effect as done, under or for the purposes of a provision repealed by the Copyright, Designs and Patents Act 1988 has effect as if done under or for the purposes of the corresponding provision of the copyright provisions in that Act⁷;
- 19 (3) references, expressed or implied, in the Copyright, Designs and Patents Act 1988 or any other enactment, instrument or document to any of the new copyright provisions are to be construed, so far as the context permits, as including, in relation to times, circumstances and purposes before 1 August 1989⁸, a reference to corresponding earlier provisions⁹;
- 20 (4) a reference, express or implied, in an enactment, instrument or other document to a provision repealed by the Copyright, Designs and Patents Act 1988 is to be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of that Act¹⁰.

1 The Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended), including Sch 1, and Schs 3, 7 and 8 so far as they make amendments or repeals consequential on the provisions of Pt I (as amended) ('the new copyright provisions').

2 Ibid s 170, Sch 1 paras 1(1), 4(1).

3 Ibid Sch 1 para 4(6). As to specific transitional provisions or savings see Sch 1 paras 5-46.

4 'Enactment' does not include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament: Interpretation Act 1978 s 5, Sch 1 (definition amended by the Scotland Act 1998 s 125, Sch 8 para 16(3)). Where an Act describes or cites a portion of an enactment by referring to words, sections or other parts from or to which (or from and to which) the portion extends, the portion described or cited includes the words, sections or other parts referred to unless the contrary intention appears: Interpretation Act 1978 s 20(1). Where an Act refers to an enactment, the reference, unless the contrary intention appears, is a reference to that enactment as amended, and includes a reference to it as extended or applied, by or under any other enactment, including any other provision of that Act: s 20(2). 'Act' means an Act of Parliament: Sch 1. As to the Scottish Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Under the Copyright Act 1956 (repealed), literary, dramatic, musical and artistic works were referred to as 'works' and sound recordings, cinematograph films, broadcasts, cable programmes and typographical arrangements of published editions were referred to as 'subject matter'.

6 Copyright, Designs and Patents Act 1988 Sch 1 para 4(2).

7 Ibid Sch 1 para 4(3).

8 ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

9 Ibid Sch 1 para 4(4).

10 Ibid Sch 1 para 4(5).

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56. Subsistence of copyright in works made before 1 August 1989.

Every work in which copyright subsisted under the Copyright Act 1956¹ immediately before 1 August 1989² (an 'existing work') is deemed to satisfy the requirements of the Copyright, Designs and Patents Act 1988³ as to qualification for copyright protection⁴. However, copyright subsists in a work made before 1 August 1989 only if copyright subsisted in it immediately before that date⁵. Such a work may nevertheless qualify for protection on and after 1 August 1989 by virtue of first publication⁶ after that date⁷ or by virtue of an Order in Council⁸. In addition, the copyright in such works may be revived by virtue of the extended term of copyright conferred under the Duration of Copyright and Rights in Performances Regulations 1995⁹.

1 As to the subsistence of copyright under the Copyright Act 1956 see PARA 35 et seq ante.

2 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

3 Ie the requirements of ibid Pt I (ss 1-179) (as amended): see PARA 57 et seq post.

4 Ibid s 170, Sch 1 paras 1(3), 35.

5 Ibid Sch 1 para 5(1). As to the duration of copyright under the Copyright Act 1956 (repealed) see PARA 47 et seq ante.

6 For the meanings of 'publication' and 'first publication' see PARA 63 post.

7 As to qualification by reference to the country of first publication see PARA 61 post.

8 Ie an Order in Council under the Copyright, Designs and Patents Act 1988 s 159: see PARA 447 post.

9 Ie under the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended): see PARA 93 post.

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(ii) Nature of Copyright

57. Copyright and copyright works.

Copyright is a property right which subsists¹ in the following descriptions of work:

- 21 (1) original² literary³, dramatic⁴, musical⁵ or artistic⁶ works⁷;
- 22 (2) sound recordings⁸, films⁹ or broadcasts¹⁰; and
- 23 (3) the typographical arrangement of published editions¹¹,

and 'copyright work' means a work of any of those descriptions in which copyright subsists¹².

Copyright does not subsist in a work unless the statutory requirements¹³ with respect to qualification for copyright protection are met¹⁴. No copyright or right in the nature of copyright subsists otherwise than by virtue of Part I of the Copyright, Designs and Patents Act 1988 or some other enactment¹⁵ in that behalf¹⁶.

Copyright may subsist in works of joint authorship¹⁷ and in works of unknown authorship¹⁸.

Ideas as such are not the subject matter of copyright, but only the form in which ideas are expressed. In many cases it is difficult to ascertain where the boundary lies¹⁹ and a more detailed collection of ideas or a pattern of incidents or a compilation of information²⁰ may amount to a substantial part of a work such that copying it may amount to infringement²¹.

The correct identification of the particular category of copyright work into which an author's work fitted is of importance both as to duration²² and as to the scope of the right conferred²³. In the case of a borderline work the proper category is that which most nearly suits the characteristics of the work in issue²⁴.

1 In accordance with the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

2 As to the meaning of the meaning of 'originality' see PARA 65 post.

3 For the meaning of 'literary work' see PARA 67 post.

4 For the meaning of 'dramatic work' see PARA 73 post.

5 For the meaning of 'musical work' see PARA 73 post.

6 For the meaning of 'artistic work' see PARA 75 post.

7 Copyright, Designs and Patents Act 1988 s 1(1)(a).

8 For the meaning of 'sound recording' see PARA 84 post.

9 For the meaning of 'film' see PARA 86 post.

10 Copyright, Designs and Patents Act 1988 s 1(1)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 5(2)). For the meaning of 'broadcast' see PARA 89 post.

11 Copyright, Designs and Patents Act 1988 s 1(1)(c). For the meaning of 'published edition' see PARA 92 post.

12 *Ibid* s 1(2). As to the taxation of copyright royalties and the proceeds of sale of copyright see INCOME TAXATION vol 23(2) (Reissue) PARA 1492 et seq.

13 *Ie* the requirements of *ibid* s 153 (see PARA 59 post) and the provisions referred to therein.

14 *Ibid* s 1(3).

15 For the meaning of 'enactment' see PARA 55 note 4 ante.

16 Copyright, Designs and Patents Act 1988 s 171(2). However, nothing in Pt I (as amended) affects: (1) any right or privilege of any person under any enactment, except where the enactment is expressly repealed, amended or modified under the Copyright, Designs and Patents Act 1988 (s 171(1)(a)); (2) any right or privilege of the Crown subsisting otherwise than under an enactment (s 171(1)(b)); (3) any right or privilege of either House of Parliament (s 171(1)(c)); (4) the right of the Crown or any person deriving title from the Crown to sell, use or otherwise deal with articles forfeited under the laws relating to customs and excise (s 171(1)(d)); (5) the operation of any rule of equity relating to breaches of trust or confidence (s 171(1)(e)). Nor does anything in Pt I (as amended) affect any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise (s 171(3)) or any right of action or remedy, whether civil or criminal, available otherwise than under Pt I (as amended) in respect of acts infringing any of the rights conferred by Pt I Ch IV (ss 77-89) (as amended) (moral rights: see PARA 455 et seq post) (s 171(4)). The savings in s 171(1) have effect subject to s 164(4) (see PARA 148 post) and s 166(7) (see PARA 152 post): s 171(5). For the meaning of 'the Crown' see PARA 5 note 2 ante. As to the prerogative right of the Crown see PARA 5 ante. As to breaches of trust and confidence see PARA 13 ante.

17 See PARA 113 post.

18 See PARA 114 post.

19 *McCrum v Eisner* (1917) 87 LJ Ch 99 (no copyright in an idea for a picture postcard); *Chilton v Progress Printing and Publishing Co* [1895] 2 Ch 29, CA (no copyright in an opinion as to the probable winner of a horse race); *Kenrick & Co v Lawrence & Co* (1890) 25 QBD 99 (no copyright in an idea for a voting card); *Walter v Steinkopff* [1892] 3 Ch 489; *Springfield v Thame* (1903) 89 LT 242 (no copyright in news but only in the form in which it is expressed); and see *Broemel v Meyer* (1912) 29 TLR 148 (no copyright in a hackneyed proverb); *Sinanide v La Maison Kosmeo* (1928) 139 LT 365, CA (no copyright in an advertisement slogan); *Harold Drabble Ltd v Hycolite Manufacturing Co* (1928) 44 TLR 264 at 266 (no copyright in an advertisement made up of words taken from other advertisements); *Greyhound Racing Association Ltd v Shallis* (1928) MacG Cop Cas (1923-28) 370 (no copyright in a list of dogs as drawn from a hat); *Kirk v Fleming* (1929) MacG Cop Cas (1928-35) 44 (no copyright in an advertisement made by stringing together four commonplace sentences); *Cartwright v Wharton* (1912) 25 OLR 357 (no copyright in a system of indexing); *Kelly v Cinema Houses Ltd* (1933) MacG Cop Cas (1928-35) 362 (probably no copyright in a fictitious character such as Falstaff or Sherlock Holmes); *Cuisenaire v South West Imports Ltd* [1968] 1 Ex CR 493 (affd [1969] SCR 208, Can SC) (no copyright in teaching rods designed to be used in connection with a book); *Gleeson and Gleeson Shirt Co Ltd v HR Denne Ltd* [1975] RPC 471 (on appeal [1975] RPC 471 at 478, CA) (idea for clerical shirt collar); *Green v Broadcasting Corp of New Zealand* [1989] 2 All ER 1056, [1989] RPC 700, PC (no copyright in format of television show 'Opportunity Knocks'); *Ibcos Computers Ltd v Barclays Mercantile Highland Finance Ltd* [1994] FSR 275 (computer programs); *Breville Europe plc v Thorn EMI Domestic Appliances Ltd* [1995] FSR 771 (shapes for toasted sandwiches); *Electronic Techniques (Anglia) Ltd v Critchley Components Ltd* [1997] FSR 401 (list of five or six common electrical components too insubstantial to qualify as original works); *Designers Guild Ltd v Russell Williams (Textiles) Ltd* [2001] 1 All ER 700, [2001] FSR 113, [2001] IP & T 277, HL (fabric design); *IPC Media Ltd v Highbury-SPL Publishing Ltd* [2004] EWHC 2985 (Ch), [2004] All ER (D) 342 (Dec) (magazine cover and articles); *Baigent v Random House Group Ltd* [2006] EWHC 719 (Ch), [2006] All ER (D) 113 (Apr) (themes of book).

20 *Cf Elanco Products Ltd v Mandops (Agrochemical Specialists) Ltd* [1980] RPC 213, CA (arguable infringement of compilation of information about a herbicide by copying the information from the claimant's product label and expressing it in different words).

21 *LB (Plastics) Ltd v Swish Products Ltd* [1979] RPC 551 at 611, HL (copyright in plastic knock-down drawer system); *Plix Products Ltd v Frank M Winstone (Merchants)* [1986] FSR 63, NZ HC (copyright in packaging for kiwi fruit); *Galago Publishers (Pty) Ltd v Erasmus* 1989 (1) SA 276, SA CA (historical account). As to infringement see PARA 311 et seq post.

22 As to the duration of copyright see PARA 93 et seq post.

23 As to the scope of the rights conferred see PARA 311 seq post.

24 *Electronic Techniques (Anglia) Ltd v Critchley Components Ltd* [1997] FSR 401 (circuit diagram comprising lines linking the symbols for five or six electrical components held to be an artistic work not a literary work).

UPDATE

57 Copyright and copyright works.

NOTE 19--*Baigent*, cited, affirmed: [2007] EWCA Civ 247, [2007] FSR 579.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/(ii) Nature of Copyright/58. Rights subsisting in copyright works.

58. Rights subsisting in copyright works.

The owner¹ of the copyright² in a work of any description has the exclusive right to do certain acts specified³ as the acts restricted by the copyright in a work of that description⁴.

In relation to certain descriptions of copyright work⁵ the following moral rights⁶ subsist in favour of the author⁷, director or commissioner of the work, whether or not he is the owner of the copyright:

- 24 (1) the right⁸ to be identified as author or director⁹;
- 25 (2) the right¹⁰ to object to derogatory treatment of work¹¹; and
- 26 (3) the right¹² to privacy of certain photographs and films¹³.

1 As to who is the owner of the copyright in a work see PARA 118 et seq post.

2 For the meaning of 'copyright' see PARA 57 ante.

3 The acts specified in the Copyright, Designs and Patents Act 1988 Pt I Ch II (ss 16-27) (as amended): see PARA 311 et seq post.

4 Ibid s 2(1).

5 For the meaning of 'copyright work' see PARA 57 ante.

6 The rights conferred by the Copyright, Designs and Patents Act 1988 Pt I Ch IV (ss 77-89) (as amended): see PARA 455 et seq post.

7 For the meaning of 'author' see PARA 110 post.

8 The right conferred by the Copyright, Designs and Patents Act 1988 s 77: see PARA 456 et seq post.

9 Ibid s 2(2)(a).

10 The right conferred by ibid s 80 (as amended): see PARA 463 et seq post.

11 Ibid s 2(2)(b).

12 The right conferred by ibid s 85 (as amended): see PARA 476 et seq post.

13 Ibid s 2(2)(c).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/(iii) Qualification for Protection/59. Qualification for copyright protection.

(iii) Qualification for Protection

59. Qualification for copyright protection.

Copyright¹ does not subsist in a work unless the qualification requirements² are satisfied as regards:

- 27 (1) the author³; or
- 28 (2) the country⁴ in which the work was first published⁵; or
- 29 (3) in the case of a broadcast⁶, the country from which the broadcast was made⁷.

If the qualification requirements⁸ are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event⁹.

1 For the meaning of 'copyright' see PARA 57 ante. The Copyright, Designs and Patents Act 1988 s 153(1) (as amended) does not apply in relation to Crown copyright (see PARA 144 et seq post) or Parliamentary copyright (see PARA 150 et seq post) or copyright subsisting by virtue of s 168 (copyright of certain international organisations: see PARA 155 post): s 153(2) (amended by the Northern Ireland Act 1998 s 99, Sch 13 para 8(1), (3)).

2 I.e. the qualification requirements of the Copyright, Designs and Patents Act 1988 Pt I Ch IX (ss 153-162) (as amended).

3 Ibid s 153(1)(a). See also note 1 supra. As to the qualification requirements see s 154 (as amended); and PARA 60 post. For the meaning of 'author' see PARA 110 post.

4 'Country' includes any territory: ibid s 178.

5 Ibid s 153(1)(b). See also note 1 supra. As to the qualification requirements see s 155; and PARA 61 post. For the meaning of 'first publication' see PARA 63 post.

6 For the meaning of 'broadcast' see PARA 89 post.

7 Copyright, Designs and Patents Act 1988 s 153(1)(c) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). See also note 1 supra. As to the qualification requirements see the Copyright, Designs and Patents Act 1988 s 156 (as amended); and PARA 62 post.

8 I.e. the qualification requirements of ibid Pt I Ch IX (as amended) or s 163 (as amended) (see PARAS 144, 146 post), s 165 (as amended) (see PARAS 150-151 post) or s 168 (see PARA 155 post).

9 Ibid s 153(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/(iii) Qualification for Protection/60. Qualification by reference to author.

60. Qualification by reference to author.

A work qualifies for copyright¹ protection if the author² was at the material time³ a qualifying person, that is:

- 30 (1) a British citizen⁴, a British overseas territories citizen⁵, a British national (overseas)⁶, a British overseas citizen⁷, a British subject⁸ or a British protected person⁹; or
- 31 (2) an individual domiciled¹⁰ or resident¹¹ in the United Kingdom¹² or another country¹³ to which the relevant provisions¹⁴ extend¹⁵; or
- 32 (3) a body incorporated under the law of a part of the United Kingdom or of another country to which the relevant provisions¹⁶ extend¹⁷.

Where, or so far as, provision is made by Order in Council applying the statutory provisions to countries to which they do not otherwise extend¹⁸, a work also qualifies for copyright protection if at the material time the author was a citizen or subject of, an individual domiciled or resident in, or a body incorporated under the law of, a country to which the Order in Council relates¹⁹.

A work of joint authorship²⁰ qualifies for copyright protection if at the material time any of the authors satisfies the above requirements²¹.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'author' see PARA 110 post.

3 The material time in relation to a literary, dramatic, musical or artistic work is: (1) in the case of an unpublished work, when the work was made or, if the making of the work extended over a period, a substantial part of that period (Copyright, Designs and Patents Act 1988 s 154(4)(a)); (2) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death (s 154(4)(b)). For the meaning of 'literary work' see PARA 67 post; for the meaning of 'dramatic work' see PARA 73 post; for the meaning of 'musical work' see PARA 73 post; and for the meaning of 'artistic work' see PARA 75 post. For the meaning of 'publication' see PARA 63 post.

The material time in relation to other descriptions of work is as follows: (a) in the case of a sound recording or film, when it was made (s 154(5)(a)); (b) in the case of a broadcast, when the broadcast was made (s 154(5)(b)); (c) in the case of the typographical arrangement of a published edition, when the edition was first published (s 154(5)(d)). For the meaning of 'sound recording' see PARA 84 post; for the meaning of 'film' see PARA 86 post; for the meaning of 'broadcast' see PARA 89 post; and for the meaning of 'published edition' see PARA 92 post.

4 For the meaning of 'British citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

5 For the meaning of 'British overseas territories citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 44 et seq.

6 For the meaning of 'British national (overseas)' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 63 et seq.

7 For the meaning of 'British overseas citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 58 et seq.

8 For the meaning of 'British subject' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 66 et seq.

9 Copyright, Designs and Patents Act 1988 s 154(1)(a) (amended by virtue of the British Overseas Territories Act 2002, s 2(3)). 'British protected person' means such a person within the meaning of the British Nationality Act 1981 (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 72 et seq); Copyright, Designs and Patents Act 1988 s 154(1)(a) (as so amended).

10 As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq.

11 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

12 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

13 For the meaning of 'country' see PARA 59 note 4 ante.

14 Ie the relevant provisions of the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

15 Ibid s 154(1)(b). As to the countries to which the Copyright, Designs and Patents Act 1988 extends see PARA 444 post.

16 Ie the relevant provisions of ibid Pt I (as amended).

17 Ibid s 154(1)(c). As to the circumstances in which a body corporate may be an author see PARA 110 post. As to bodies corporate see COMPANIES; CORPORATIONS.

18 Ie an Order in Council under ibid s 159: see PARA 447 post.

19 Ibid s 154(2).

20 For the meaning of 'work of joint authorship' see PARA 113 post.

21 Copyright, Designs and Patents Act 1988 s 154(3). Where a work qualifies for copyright protection only under s 154 (as amended), only those authors who satisfy those requirements are to be taken into account for the purposes of: (1) s 11(1), (2) (first ownership of copyright; entitlement of author or author's employer: see PARA 118 post); (2) s 12 (as substituted) (duration of copyright: see PARA 102 post), and s 9(4) (meaning of 'unknown authorship': see PARA 114 post) so far as it applies for the purposes of s 12 (as substituted); and (3) s 57 (anonymous or pseudonymous works; acts permitted on assumptions as to expiry of copyright or death of author: see PARA 384 post): s 154(3) (amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 5(3)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/(iii) Qualification for Protection/61. Qualification by reference to country of first publication.

61. Qualification by reference to country of first publication.

A literary¹, dramatic², musical³ or artistic⁴ work, a sound recording⁵ or film⁶, or the typographical arrangement of a published edition⁷, qualifies for copyright⁸ protection if it is first published⁹ in the United Kingdom¹⁰ or in another country¹¹ to which the relevant provisions¹² extend¹³.

Where, or so far as, provision is made by Order in Council applying the statutory provisions to countries to which they do not otherwise extend¹⁴, such a work also qualifies for copyright protection if it is first published in a country to which the Order in Council relates¹⁵.

For these purposes, publication in one country is not to be regarded as other than the first publication by reason of simultaneous publication elsewhere; and for this purpose publication elsewhere within the previous 30 days is to be treated as simultaneous¹⁶.

1 For the meaning of 'literary work' see PARA 67 post.

2 For the meaning of 'dramatic work' see PARA 73 post.

3 For the meaning of 'musical work' see PARA 73 post.

4 For the meaning of 'artistic work' see PARA 75 post.

5 For the meaning of 'sound recording' see PARA 84 post.

6 For the meaning of 'film' see PARA 86 post.

7 For the meaning of 'published edition' see PARA 92 post.

8 For the meaning of 'copyright' see PARA 57 ante.

9 For the meaning of 'publication' see PARA 63 post.

10 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

11 For the meaning of 'country' see PARA 59 note 4 ante.

12 I.e. the relevant provisions of the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

13 Ibid s 155(1). As to the countries to which the Copyright, Designs and Patents Act 1988 extends see PARA 444 post.

14 I.e. an Order in Council under ibid s 159: see PARA 447 post.

15 Ibid s 155(2).

16 Ibid s 155(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/(iii) Qualification for Protection/62. Qualification by reference to place of transmission.

62. Qualification by reference to place of transmission.

A broadcast¹ qualifies for copyright² protection if it is made from a place in the United Kingdom³ or another country⁴ to which the relevant provisions⁵ extend⁶.

Where, or so far as, provision is made by Order in Council applying the statutory provisions to countries to which they do not otherwise extend⁷, a broadcast also qualifies for copyright protection if it is made from a place in a country to which the Order in Council relates⁸.

1 For the meaning of 'broadcast' see PARA 89 post.

2 For the meaning of 'copyright' see PARA 57 ante.

3 Copyright, Designs and Patents Act 1988 s 156(1)(a) (s 156(1), (2) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

4 For the meaning of 'country' see PARA 59 note 4 ante.

5 I.e. the relevant provisions of the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

6 Ibid s 156(1)(b). As to the countries to which the Copyright, Designs and Patents Act 1988 extends see PARA 444 post.

7 I.e. an Order in Council under ibid s 159: see PARA 447 post.

8 Ibid s 156(2) (as amended: see note 3 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/(iii) Qualification for Protection/63. Meanings of 'publication' and 'commercial publication'.

63. Meanings of 'publication' and 'commercial publication'.

The protection given by the Copyright, Designs and Patents Act 1988 may depend on whether the work has been published¹.

'Publication', in relation to a work, means the issue of copies to the public² and includes, in the case of a literary³, dramatic⁴, musical⁵ or artistic⁶ work, making it available to the public by means of an electronic⁷ retrieval system⁸.

'Commercial publication', in relation to a literary, dramatic, musical or artistic work, means issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public or making the work available to the public by means of an electronic retrieval system⁹.

In the case of a work of architecture¹⁰ in the form of a building¹¹, or an artistic work incorporated in a building, construction of the building is to be treated as equivalent to publication of the work¹².

The following do not constitute publication and references to commercial publication are to be construed accordingly:

- 33 (1) in the case of a literary, dramatic or musical work: the performance¹³ of the work¹⁴; or the communication to the public¹⁵ of the work otherwise than for the purposes of an electronic retrieval system¹⁶;
- 34 (2) in the case of an artistic work: the exhibition of the work¹⁷; the issue to the public of copies of a graphic work¹⁸ representing, or of photographs¹⁹ of, a work of architecture in the form of a building or a model for a building, a sculpture²⁰ or a work of artistic craftsmanship²¹; the issue to the public of copies of a film²² including the work²³; or the communication to the public of the work otherwise than for the purposes of an electronic retrieval system²⁴;
- 35 (3) in the case of a sound recording²⁵ or film: the work being played or shown in public²⁶; or the communication to the public of the work²⁷.

References to publication or commercial publication do not include publication which is merely colourable²⁸ and not intended to satisfy the reasonable requirements of the public²⁹.

No account is to be taken for the above purposes of any unauthorised³⁰ act³¹.

1 As to qualification by reference to the country of first publication see PARA 61 ante.

2 Copyright, Designs and Patents Act 1988 s 175(1)(a). For the meaning of 'issue copies to the public' see PARA 322 et seq post. The issue to the public of components made from manufacturing drawings constitutes publication of those drawings: see *British Northrop Ltd v Texteam Blackburn Ltd* [1974] RPC 57.

3 For the meaning of 'literary work' see PARA 67 post.

4 For the meaning of 'dramatic work' see PARA 73 post.

5 For the meaning of 'musical work' see PARA 73 post.

6 For the meaning of 'artistic work' see PARA 75 post.

- 7 For the meaning of 'electronic' see PARA 184 note 2 post.
- 8 Copyright, Designs and Patents Act 1988 s 175(1)(b). Related expressions are to be construed accordingly: s 175(1). It has been held that the place of publication is where copies are put on offer and not where they are received: see *British Northrop Ltd v Texteam Blackburn Ltd* [1974] RPC 57.
- 9 Copyright, Designs and Patents Act 1988 s 175(2). Related expressions are to be construed accordingly: s 175(2).
- 10 For the meaning of 'work of architecture' see PARA 79 post.
- 11 For the meaning of 'building' see PARA 79 post.
- 12 Copyright, Designs and Patents Act 1988 s 175(3). Section 175(3) applies only where the construction of the building began on or after 1 August 1989: s 170, Sch 1 para 45.
- 13 For the meaning of 'performance' see PARA 324 post.
- 14 Copyright, Designs and Patents Act 1988 s 175(4)(a)(i).
- 15 For the meaning of 'communication to the public' see PARA 326 post.
- 16 Copyright, Designs and Patents Act 1988 s 175(4)(a)(ii) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 6(1)).
- 17 Copyright, Designs and Patents Act 1988 s 175(4)(b)(i).
- 18 For the meaning of 'graphic work' see PARA 76 post.
- 19 For the meaning of 'photograph' see PARA 77 post.
- 20 For the meaning of 'sculpture' see PARA 78 post.
- 21 Copyright, Designs and Patents Act 1988 s 175(4)(b)(ii). For the meaning of 'work of artistic craftsmanship' see PARA 80 post.
- 22 For the meaning of 'film' see PARA 86 post.
- 23 Copyright, Designs and Patents Act 1988 s 175(4)(b)(iii).
- 24 Ibid s 175(4)(b)(iv) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 6(1)).
- 25 For the meaning of 'sound recording' see PARA 84 post.
- 26 Copyright, Designs and Patents Act 1988 s 175(4)(c)(i). As to playing or showing such works in public see PARA 324 post.
- 27 Ibid s 175(4)(c)(ii) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 6(1)).
- 28 'Colourable' is the antithesis of 'bona fide': *Etherington v Wilson* (1875) 1 ChD 160 at 166, CA, per James LJ. If the smallness of the number of copies placed on sale is due to the fact that, in all good faith, only a small sale is expected, the publication is not colourable: *Francis, Day and Hunter v Feldman & Co* [1914] 2 Ch 728, CA. See also *Bodley Head Ltd v Flegon* [1972] 1 WLR 680, [1972] RPC 587 (alleged clandestine circulation in Russia of typewritten copies of novel); *OSCAR Trade Mark* [1980] FSR 429 (distribution of Oscar statuette to award winners not publication); *Television Broadcasts Ltd v Mandarin Video Holdings Sdn Bhd* [1984] FSR 111, Malay HC.
- 29 Copyright, Designs and Patents Act 1988 s 175(5).
- 30 'Unauthorised', as regards anything done in relation to a work, means done otherwise than: (1) by or with the licence of the copyright owner; or (2) if copyright does not subsist in the work, by or with the licence of the author or, in a case where ibid s 11(2) (see PARA 118 post) would have applied, the author's employer or, in either case, persons lawfully claiming under him; or (3) in pursuance of s 48 (as amended) (see PARA 368 post): s 178. For the purposes of the application of the expression 'unauthorised' in relation to things done before 1 August 1989: (a) head (1) supra applies in relation to things done before 1 June 1957 as if the reference to the licence of the copyright owner were a reference to his consent or acquiescence; (b) head (2) supra applies as if

it referred only to the licence of the author or any person lawfully claiming under him; and (c) head (3) supra is to be disregarded: Sch 1 para 46. For the meaning of 'author' see PARA 110 post; and as to who is the owner of the copyright in a work see PARA 118 et seq post.

31 Ibid s 175(6).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/(iii) Qualification for Protection/64. Works contrary to public policy.

64. Works contrary to public policy.

Nothing in the Copyright, Designs and Patents Act 1988 affects any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise¹. Thus there may be a defence to a claim for the infringement of copyright² that publication was in the public interest³.

The circumstances in which public interest may override copyright are not capable of precise categorisation or definition⁴. Copyright has in the past been held not to exist in a work of grossly immoral tendency⁵, nor in a work which is blasphemous⁶, or seditious⁷; but an author may claim copyright in a part of an unpublished work without being compelled to disclose other parts which might render the whole incapable of protection⁸. A work containing statements which are false to the knowledge of the claimant and are calculated to deceive the public is not entitled to the protection of the court⁹. A work which, though it embodied new matter, itself infringed copyright, will not necessarily be refused protection on that ground¹⁰. It seems probable that no work which is contrary to public policy will be protected¹¹.

1 Copyright, Designs and Patents Act 1988 s 171(3).

2 For the meaning of 'copyright' see PARA 57 ante. As to infringement see PARA 311 et seq post.

3 As to the defence of public interest see PARA 408 post.

4 *Ashdown v Telegraph Group Ltd* [2001] EWCA Civ 1142, [2002] Ch 149, [2001] 4 All ER 666.

5 *Glyn v Weston Feature Film Co* [1916] 1 Ch 261 at 269 per Younger J; *Stockdale v Onwhyn* (1826) 5 B & C 173; *Baschet v London Illustrated Standard Co* [1900] 1 Ch 73; and see *Poplett v Stockdale* (1825) 2 C & P 198; *Lord Byron v Dugdale* (1823) 1 LJOS Ch 239 (where a doubt existed as to the character of the work and the court dissolved an ex parte injunction, leaving the claimant to assert his legal rights by action). In *Pasickniak v Dojacek* [1928] 2 DLR 545, Man CA, a work on dreams was held not to be immoral in fact. It is not clear whether there is no copyright in such works, or whether copyright exists, but will not be afforded protection by the courts: see *Stockdale v Onwhyn* supra at 176 per Abbott CJ; *Glyn v Weston Feature Film Co* supra at 270 per Younger J. The latter case suggests that a work which could not lawfully be sold because of its immoral tendencies will not be protected by copyright; but see *Stephens v Avery* [1988] Ch 449 at 453, [1988] 2 All ER 477 at 480 (breach of confidence; lesbian conduct).

6 *Lawrence v Smith* (1822) Jac 471; *Murray v Benbow* (1822) 1 Jac 474n; cf *Cowan v Milbourn* (1867) LR 2 Exch 230.

7 *Hime v Dale* (1804) 2 Camp 27n; *Southey v Sherwood* (1817) 2 Mer 435.

8 *Sitwell v Sun Engraving Co Ltd* [1937] 4 All ER 366, CA.

9 *Slingsby v Bradford Patent Truck and Trolley Co* [1905] WN 122 (affd [1906] WN 51, CA); *Hayward Bros v Lely & Co* (1887) 56 LT 418 at 421; *Wright v Talis* (1845) 1 CB 893; cf *Seeley v Fisher* (1841) 11 Sim 581 (where the defendant's work had not been held out to be the work in which the claimant had copyright; and the defendant was not restrained from publishing an advertisement disparaging the claimant's work). See also *A-G v Observer Ltd, A-G v Times Newspapers Ltd* [1990] 1 AC 109 at 262, sub nom *A-G v Guardian Newspapers Ltd (No 2)* [1988] 3 All ER 545 at 644-645, HL, per Lord Keith of Kinkel, at 276-277 and 655-656 per Lord Griffiths, and at 294 and 668 per Lord Jauncey of Tullichettle.

10 *Redwood Music Ltd v Chappell & Co Ltd* [1982] RPC 109 at 120; *British Leyland Motor Corp v Armstrong Patents Co Ltd* [1982] FSR 481 at 502; *ZYX Music GmbH v King* [1995] 3 All ER 1 at 9, [1995] FSR 566 at 576 (affd [1997] 2 All ER 129, [1997] EMLR 319, CA).

11 See *British Oxygen Co Ltd v Liquid Air Ltd* [1925] Ch 383. A form for credit betting on football matches was held not to be against public policy in *Barnard v White* (1926) MacG Cop Cas (1923-28) 218; and, in *Cate v Devon and Exeter Constitutional Newspaper Co* (1889) 40 ChD 500, matter contained in a newspaper was held entitled to copyright notwithstanding that the newspaper was not registered under the Newspaper Libel and Registration Act 1881; cf *Television Broadcasts Ltd v Mandarin Video Holdings Sdn Bhd* [1984] FSR 111, Malay HC (film imported and published in violation of local censorship Act not deprived of copyright).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/(iii) Qualification for Protection/65. Originality.

65. Originality.

Only original literary¹, dramatic², musical³ or artistic⁴ works are protected by copyright⁵. It is not requisite that the work should be the expression of original or inventive thought, for Copyright Acts are not concerned with the originality of ideas, but with the expression of thought, and, in the case of a literary work, with the expression of thought in print or writing⁶ and, in the case of an artistic work, with that which is visually significant⁷. The originality which is required relates to the expression of the thought. It is not required that the expression should be in an original or novel form or that it should have any aesthetic merit, quality or value⁸, but that the work should not be copied from another work; it should originate from the author⁹. Thus a report of a speech¹⁰, a photograph of a picture¹¹ or a three dimensional item¹², a sketch of a piece of machinery¹³, a translation of a foreign work¹⁴, a film script of book¹⁵, modern performing editions of baroque musical compositions¹⁶ and an information service to race-goers¹⁷, are protected; and so too is a book of mathematical calculations, if independently worked out, even though in form identical with an existing book¹⁸. The owner of copyright has, in short, no monopoly in the subject matter. Others are at liberty to produce the same result, provided that they do so independently and, although they are not the first in the field, their work is none the less 'original' in the sense in which that word is used in the Copyright, Designs and Patents Act 1988.

If no skill or labour is employed in producing the particular form in which the work is expressed, there will be no copyright in it, although it may embody an original idea or opinion¹⁹. Copying per se, however much skill and labour is devoted to the process, will normally not result in an original work²⁰. To secure copyright it is necessary that labour, skill or independent judgment be expended to import to the product some quality or character which the raw material did not possess and which differentiates it from the raw material²¹. Where a work has been produced from an antecedent work, it is a question of fact whether sufficient skill and labour have been expended to generate a new copyright work²². Conversely, where a final work is produced after a series of drafts, it is not deprived of originality because the author has adapted it with minor variations from an earlier version²³. There is, therefore, no copyright in news as such, but only in the form in which it is expressed²⁴; and there is no copyright in an advertisement slogan²⁵, or in the name of a horse selected as a probable winner²⁶. The fact that a work is simple in its conception does not, however, prevent it from being original²⁷.

A literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of its contents the database constitutes the author's own intellectual creation²⁸.

1 For the meaning of 'literary work' see PARA 67 post.

2 For the meaning of 'dramatic work' see PARA 73 post.

3 For the meaning of 'musical work' see PARA 73 post.

4 For the meaning of 'artistic work' see PARA 75 post.

5 See the Copyright, Designs and Patents Act 1988 s 1(1)(a); and PARA 57 ante. For the meaning of 'copyright' see PARA 57 ante.

6 *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 at 608 per Peterson J; and see *Fraser v Evans* [1969] 1 QB 349 at 362, [1969] 1 All ER 8 at 12, CA; *Interlego AG v Tyco Industries Inc*

[1989] AC 217, [1988] 3 All ER 949, [1988] RPC 343, PC (where the authorities are reviewed). See also *Baigent v Random House Group Ltd* [2006] EWHC 719 (Ch), [2006] All ER (D) 113 (Apr).

7 *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 at 608-609 per Peterson J; *Macmillan & Co Ltd v K & J Cooper* (1923) 93 LJPC 113, PC; *Sands and Macdougall Pty Ltd v Robinson* (1917) 23 CLR 49.

8 See *Sawkins v Hyperion Records Ltd* [2005] EWCA Civ 565, [2005] 3 All ER 636, [2005] IP & T 923. 'The policy of copyright protection and its limited scope explain why the threshold requirement of an 'original' work has been interpreted as not imposing objective standards of novelty, usefulness, inventiveness, aesthetic merit, quality or value. A work may be complete rubbish and utterly worthless, but copyright protection may be available for it, just as it is for the great masterpieces of imaginative literature, art and music. A work need only be 'original' in the limited sense that the author originated it by his efforts rather than slavishly copying it from the work produced by the efforts of another person': *Sawkins v Hyperion Records Ltd* supra at [31] per Mummery LJ.

9 *Interlego AG v Tyco Industries Inc* [1989] AC 217 at 266, [1988] 3 All ER 949 at 974, [1988] RPC 343 at 374, PC. See also *Duriron Co Inc v Hugh Jennings & Co Ltd* [1984] FSR 1 at 10, CA; *Rose Plastics GmbH v William Beckett & Co (Plastics) Ltd* [1989] FSR 113; *Johnstone Safety Ltd v Peter Cook (International) plc* [1990] FSR 161, CA; *Billhöfer Maschinenfabrik GmbH v TH Dixon & Co Ltd* [1990] FSR 105 at 120-122.

10 *Walter v Lane* [1900] AC 539, HL. This authority is still good law: see *Express Newspapers plc v News (UK) Ltd* [1990] 3 All ER 376, [1990] FSR 359; *Sawkins v Hyperion Records Ltd* [2005] EWCA Civ 565, [2005] 3 All ER 636, [2005] IP & T 923.

11 *Graves' Case* (1869) LR 4 QB 715.

12 *Antiquesportfolio.com plc v Rodney Fitch & Co Ltd* [2001] IP & T 1375, [2001] FSR 345 (photographs of antiques).

13 *BO Morris Ltd v F Gilman (BST) Ltd* (1943) 60 RPC 20.

14 *Byrne v Statist Co* [1914] 1 KB 622.

15 *Christoffer v Poseidon Film Distributors Ltd* [1999] IP & T 118, [1999] All ER (D) 1063.

16 *Sawkins v Hyperion Records Ltd* [2005] EWCA Civ 565, [2005] 3 All ER 636, [2005] IP & T 923.

17 *Portway Press Ltd v Hague* [1957] RPC 426; *Ascot Jockey Club Ltd v Simons* (1968) 64 WWR 411, BC SC.

18 *Baily v Taylor* (1829) 1 Russ & M 73.

19 See the cases cited in PARA 57 note 19 ante.

20 *Sawkins v Hyperion Records Ltd* [2005] EWCA Civ 565, [2005] 3 All ER 636, [2005] IP & T 923; *Interlego AG v Tyco Industries Inc* [1989] AC 217 at 259-268, [1988] 3 All ER 949 at 968-976, [1988] RPC 343 at 368-376, PC (small alterations which had minute effect on appearance of technical drawing but which were technically significant did not make the revised drawing 'original').

21 *Macmillan & Co Ltd v K & J Cooper* (1923) 40 TLR 186, PC; cited with approval in *Interlego AG v Tyco Industries Inc* [1989] AC 217, [1988] 3 All ER 949, [1988] RPC 343, PC.

22 *Interlego AG v Tyco Industries Inc* [1989] AC 217, [1988] 3 All ER 949, [1988] RPC 343, PC; *MacMillan Publishers Ltd v Thomas Reed Publications Ltd* [1993] FSR 455.

23 *LA Gear Inc v Hi-Tech Sports plc* [1992] FSR 121; *Biotrading and Financing Oy v Biohit Ltd* [1998] FSR 109, CA.

24 *Walter v Steinkopff* [1892] 3 Ch 489; *Springfield v Thame* (1903) 89 LT 242; *Wilson v Luke* (1875) 1 VLR (Eq) 127; *Jones v Atack* (1890) 9 NZLR 174.

25 *Sinanide v La Maison Kosmeo* (1928) 139 LT 365, CA; *Harold Drabble Ltd v Hycolite Manufacturing Co* (1928) 44 TLR 264.

26 *Chilton v Progress Printing and Publishing Co* [1895] 2 Ch 29, CA.

27 *British Northrop Ltd v Texteam Blackburn Ltd* [1974] RPC 57.

28 See PARA 733 post.

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65 Originality

NOTE 6--*Baigent*, cited, affirmed: [2007] EWCA Civ 247, [2007] FSR 579.

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(iv) Particular Works

A. LITERARY, DRAMATIC AND MUSICAL WORKS

66. Literary, dramatic and musical works.

Copyright¹ does not subsist in a literary², dramatic³ or musical⁴ work unless and until it is recorded in writing⁵ or otherwise⁶.

It is immaterial for the purposes of subsistence of copyright whether the work is recorded by or with the permission of the author⁷; and, where it is not recorded by the author, nothing in the requirement that the work does not acquire copyright until it has been recorded affects the question whether copyright subsists in the record as distinct from the work recorded⁸.

The typographical arrangement⁹ of published editions¹⁰ of literary, dramatic and musical works is protected, in certain circumstances, by copyright, in addition to the copyright in the work itself¹¹.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'literary work' see PARA 67 post.

3 For the meaning of 'dramatic work' see PARA 73 post.

4 For the meaning of 'musical work' see PARA 73 post.

5 'Writing' includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded; and 'written' is to be construed accordingly: Copyright, Designs and Patents Act 1988 s 178.

6 Ibid s 3(2). References in Pt I (ss 1-179) (as amended) to the time at which such a work is made are references to the time at which it is so recorded: s 3(2).

7 Ibid s 3(3). For the meaning of 'author' see PARA 110 post.

8 Ibid s 3(3). For examples of the so-called 'reporter's copyright' see *Walter v Lane* [1900] AC 539, HL; *Sands and McDougall Pty Ltd v Robinson* (1917) 23 CLR 49; *Express Newspapers plc v News (UK) Ltd* [1990] 3 All ER 376, [1990] FSR 359.

9 As to such typographical arrangements see PARA 91 post.

10 For the meaning of 'published edition' see PARA 92 post.

11 See PARA 91 post.

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67. Meaning of 'literary work'.

'Literary work' means any work, other than a dramatic¹ or musical² work, which is written³, spoken or sung, and accordingly includes:

- 36 (1) a table or compilation⁴ other than a database⁵;
- 37 (2) a computer program⁶;
- 38 (3) preparatory design material for a computer program⁷; and
- 39 (4) a database⁸.

The expression 'literary work' covers work which is expressed in print or writing, irrespective of whether the quality or style is high⁹. Although often used in the sense of written or printed matter, such form of fixation is not necessary and a literary work is protected provided that it has been recorded in writing¹⁰ or otherwise¹¹, as, for example, on a tape recording. There is no copyright in a mere collection of words, which is not a compilation, and the collection of which has not involved any literary skill¹² or in a single word¹³. A literary work is generally intended to afford either information, instruction or pleasure¹⁴. Anything which is appreciated simply with the eye is not within the scope of literary copyright but may be the subject of artistic copyright¹⁵.

1 For the meaning of 'dramatic work' see PARA 73 post.

2 For the meaning of 'musical work' see PARA 73 post.

3 For the meaning of 'written' see PARA 66 note 5 ante.

4 As to tables and compilations see PARA 68 post. Under the Copyright Act 1911 s 35(1) (repealed), the expression 'literary work' included maps, charts and plans but these became protected as artistic works under the Copyright Act 1956 ss 3(1), 48(1) (repealed) (see PARAS 37 note 6, 41 ante). See now the Copyright, Designs and Patents Act 1988 s 4; PARA 74 et seq post.

5 Copyright, Designs and Patents Act 1988 s 3(1)(a) (amended by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 5(a); and the Copyright (Computer Programs) Regulations 1992, SI 1992/3233, reg 3). For the meaning of 'database' see PARA 731 post. Databases were formerly protected as literary works by virtue of being types of compilations: see PARA 730 post. As to the copyright in databases see PARAS 731-735 post.

6 Copyright, Designs and Patents Act 1988 s 3(1)(b) (amended by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 5(b)). As to computer programs see PARA 72 post.

7 Copyright, Designs and Patents Act 1988 s 3(1)(c) (added by the Copyright (Computer Programs) Regulations 1992, SI 1992/3233, reg 3). See *Nova Productions Ltd v Mazooma Games Ltd* [2006] EWHC 24 (Ch), [2006] All ER (D) 131 (Jan).

8 Copyright, Designs and Patents Act 1988 s 3(1)(d) (amended by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 5(c)).

9 *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 at 608 per Peterson J, cited with approval in *British Oxygen Co Ltd v Liquid Air Ltd* [1925] Ch 383. See PARA 65 ante. See also the following cases in which it was held that copyright subsisted in the works mentioned: *University of London Press Ltd v University Tutorial Press Ltd* supra (examination papers); *Masson Seeley & Co Ltd v Embosotype Manufacturing Co* (1924) 41 RPC 160 (catalogue of sets of type); *Educational Company of Ireland Ltd v Fallon Bros Ltd and Getz* [1919] 1 IR 62 (French school book); *Warren v Foster Bros Clothing Co Ltd* (1906) 51 Sol Jo 145 (printed instructions on money-box); *Van Oppen & Co Ltd v Van Oppen* (1903) 20 RPC 617 (consignment note); *Southern*

v Bailes (1894) 38 Sol Jo 681 (printed form); *Lamb v Evans* [1893] 1 Ch 218, CA (headings of circulars); *Stevens & Sons v Waterlow & Sons Ltd* (1877) 41 JP 37 (law list); *Waterlow Directories Ltd v Reed Information Services Ltd* [1992] FSR 409 (legal directories); *Cobbett v Woodward* (1872) LR 14 Eq 407 (trade catalogue); *Hotten v Arthur* (1863) 1 Hem & M 603 (trade catalogue); *Harpers Ltd v Barry, Henry & Co Ltd* (1892) 20 R 133 (price lists); *Lennie v Pillans* (1843) 5 D 416, Ct of Sess (school book); *Co-operative Union Ltd v Kilmore, Aughrim and Killucan Dairy Society Ltd* (1912) 47 ILT 7 (society rules); *Real Estate Institute of New South Wales v Wood* (1923) 23 SRNSW 349 (printed form); *TM Hall & Co v Whittington & Co* (1892) 18 VLR 525 (compilations of official entries); *Church v Linton* (1894) 25 OR 131 (school circulars); *Ghafur v Jwala* (1921) ILR 43 All 412 (grammar); *Anacon Corp Ltd v Environmental Research Technology Ltd* [1994] FSR 659 (electrical circuit diagram as a compilation of information about electrical components and their values; but see *Electronic Techniques (Anglia) Ltd v Critchley Components Ltd* [1997] FSR 401); *Express Newspapers plc v Liverpool Daily Post and Echo plc* [1985] 3 All ER 680, [1985] 1 WLR 1089 (25-letter grids for newspaper competition); *Football League Ltd v Littlewoods Pools Ltd* [1959] Ch 637, [1959] 2 All ER 546 (lists of football fixtures); *Bookmakers' Afternoon Greyhound Services Ltd v Wilf Gilbert (Staffordshire) Ltd* [1994] FSR 723 (greyhound race cards and race forecast dividends); *Independent Television Publications Ltd v Time Out Ltd and Elliott, British Broadcasting Corp v Time Out Ltd and Elliott* [1984] FSR 64 (television listings; but see now PARA 198 et seq post).

10 It was an open question under the Copyright Act 1956 (repealed) whether, for a literary work to enjoy copyright protection, any material form of fixation was sufficient or whether some 'writing' was necessary, this now being defined as 'any form of notation, whether by hand or by printing, typewriting or any similar process' (Copyright, Designs and Patents Act 1988 s 178). The view that any form of fixation is sufficient received some judicial support in *Green v Broadcasting Corp of New Zealand* [1989] RPC 469 at 483-484, 494, NZ CA.

11 See the Copyright, Designs and Patents Act 1988 s 3(2); and PARA 66 ante.

12 *Libraco Ltd v Shaw Walker Ltd* (1913) 30 TLR 22 (words on cards for a card index system); *Page v Wisden* (1869) 20 LT 435 (cricket scoring-sheet); *Cable v Marks* (1882) 52 LJ Ch 107 (instructions for a pastime); *Fournet v Pearson Ltd* (1897) 14 TLR 82, CA (experimental writing); *Griffin v Kingston and Pembroke Rly Co* (1889) 17 OR 660 (railway ticket).

13 *Exxon Corp v Exxon Insurance Consultants International Ltd* [1982] Ch 119, [1981] 3 All ER 241, CA.

14 *Hollinrake v Truswell* [1894] 3 Ch 420 at 428, CA, cited with approval in *Exxon Corp v Exxon Insurance Consultants International Ltd* [1982] Ch 119, [1981] 3 All ER 241, CA, and with caution in *Computer Edge Pty Ltd v Apple Computer Inc* [1986] FSR 537 at 553, Aust HC. See also *Noah v Shuba* [1991] FSR 14 at 33.

15 *Electronic Techniques (Anglia) Ltd v Critchley Components Ltd* [1997] FSR 401 (interlinking lines on a circuit diagram not protected as a literary work). If substantial enough, written information on a drawing may qualify as a literary work: *Anacon Corp Ltd v Environmental Research Technology Ltd* [1994] FSR 659. As to artistic works see PARA 74 et seq post.

UPDATE

67 Meaning of 'literary work'

NOTE 7--*Nova*, cited, affirmed: [2007] EWCA Civ 219, [2007] IP & T 899.

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68. Compilations.

The skill and labour necessary in order to fulfil the test of originality¹ may consist in the compilation of dictionaries, directories, maps or road books², or in the mere preparation of lists³, although there will be no copyright if the list conveys no useful information whatever⁴ or the skill and labour expended in the compilation are insignificant⁵. The skill and labour may consist only in the improvement of an existing work as in bringing up to date a directory⁶, or a road book⁷, or in bringing out a new edition of an existing work, provided that the work is so improved as to constitute in reality a new work. The new edition, if it fulfils that condition, becomes a separate subject of copyright⁸. The labour of compiling a programme where time, skill and money have been expended on the form and arrangement is sufficient to enable the compiler to restrain the copying of his work⁹. A list of tours for travellers has been protected on the ground that there was not only a selection, but also a condensation and an arrangement which would be of value to the travelling public¹⁰. The labour of arranging timetables obtained from a common source in such a way that they should be more convenient for travellers starting from a particular town was, however, not thought sufficient to entitle the resultant work to protection¹¹; nor was the selection of seven tables containing information of a commonplace character for inclusion in a diary considered to require a sufficient element of skill to give copyright to the compilation¹². The work must be regarded as a whole; it is not the correct approach to dissect the work into fragments and, if these are not entitled to copyright, to deduce that the whole could not be so entitled¹³.

Databases¹⁴ were formerly protected as literary works by virtue of being types of compilations¹⁵.

1 See PARA 65 ante.

2 *Spies v Brown* (1858) 31 LTOS 16 (dictionary); *Kelly v Morris* (1866) LR 1 Eq 697; *Morris v Ashbee* (1868) LR 7 Eq 34; *Morris v Wright* (1870) 5 Ch App 279 (directory); *Waterlow Directories Ltd v Reed Information Services Ltd* [1992] FSR 409 (directory); *Cary v Kearsley* (1802) 4 Esp 168 (road book); *Robinson v Sands and Macdougall Pty Ltd* (1916) 22 CLR 124 (map). Although a map is now protected as an artistic work, a compilation containing maps is, it seems, protected as a literary work: see the Copyright, Designs and Patents Act 1988 s 3(1); and PARA 67 ante. The compilation or selection of information, such as towns, lakes etc, recorded on a map is also treated as a literary work: see *Geographia Ltd v Penguin Books Ltd* [1985] FSR 208.

3 *Matthewson v Stockdale* (1806) 12 Ves 270 (an East India calendar); *Longman v Winchester* (1809) 16 Ves 269 (a court calendar); *Lewis v Fullarton* (1839) 2 Beav 6 (a topographical dictionary); *Jarrol v Houlston* (1857) 3 K & J 708 (a book of questions and answers on scientific subjects taken from common sources); *Cox v Land and Water Journal Co* (1869) LR 9 Eq 324 (list of hunting days of hounds); *Trade Auxiliary Co v Middlesborough and District Tradesmen's Protection Association* (1889) 40 ChD 425, CA (list of bills of sale); *Cate v Devon and Exeter Constitutional Newspaper Co* (1889) 40 ChD 500 (list of deeds of arrangement); *Kenrick v Danube Collieries and Minerals Co Ltd* (1891) 39 WR 473; *Exchange Telegraph Co Ltd v Gregory & Co* [1896] 1 QB 147, CA (list of stock exchange quotations); *Collis v Cater, Stoffell and Fortt Ltd* (1898) 78 LT 613 (list of drugs and chemicals); *Nisbet & Co Ltd v Golf Agency* (1907) 23 TLR 370 (biographical notes of golfers); *Weatherby & Sons v International Horse Agency and Exchange Ltd* [1910] 2 Ch 297 (a studbook); *H Blacklock & Co Ltd v C Arthur Pearson Ltd* [1915] 2 Ch 376 (index of stations in Bradshaw's railway guide); *Cartwright v Wharton* (1912) 25 OLR 357 (list of barristers and solicitors); *TM Hall & Co v Whittington & Co* (1892) 18 VLR 525 (list of bills of sale); *Odhams Press Ltd v London and Provincial Sporting News Agency (1929) Ltd* [1935] Ch 672 (on appeal [1936] Ch 357, [1936] 1 All ER 217, CA) (list of starting prices of horses in racing; Eve J held that no copyright subsisted, but this view was criticised in the Court of Appeal); *I Whitaker & Sons Ltd v Publishers' Circular Ltd* (1946) MacG Cop Cas (1946-47) 10 (list of recently published books); *Portway Press Ltd v Hague* [1957] RPC 426 (information sheets for race-goers); *Football League Ltd v Littlewoods Pools Ltd* [1959] Ch 637, [1959] 2 All ER 546 (chronological list of football matches); *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 All ER 465, [1964] 1 WLR 273, HL (list of betting odds on football matches); *Ascot Jockey Club Ltd v Simons* (1968) 64 WWR 411, BC SC (horseracing information); *National Film Board v Brer* (1970) 63 CPR 164 (glossary of film

terms); *Elanco Products Ltd v Mandops (Agrochemical Specialists) Ltd* [1980] RPC 213, CA (informational literature about a herbicide); *Independent Television Publications Ltd v Time Out Ltd and Elliott, British Broadcasting Corp v Time Out Ltd and Elliott* [1984] FSR 64 (television listings; but see now PARA 198 et seq post); *Waterlow Directories Ltd v Reed Information Services Ltd* [1992] FSR 409 (the Law List); *Bookmakers' Afternoon Greyhound Services Ltd v Wilf Gilbert (Staffordshire) Ltd* [1994] FSR 723 (greyhound race forecast dividends); *Anacon Corp Ltd v Environmental Research Technology Ltd* [1994] FSR 659 (electrical circuit diagram as compilation of information about electrical components and their values); but see *Electronic Techniques (Anglia) Ltd v Critchley Components Ltd* [1997] FSR 401; and PARA 69 post.

4 *Weatherby & Sons v International Horse Agency and Exchange Ltd* [1910] 2 Ch 297 at 304 per Parker J.

5 *GA Cramp & Sons Ltd v Frank Smythson Ltd* [1944] AC 329, [1944] 2 All ER 92, HL; *Electronic Techniques (Anglia) Ltd v Critchley Components Ltd* [1997] FSR 401.

6 *Cornish v Upton* (1861) 4 LT 862.

7 *Cary v Longman* (1801) 1 East 358

8 *Black v Murray & Son* (1870) 9 M 341 at 343 per Lord Inglis; *H Blacklock & Co Ltd v C Arthur Pearson Ltd* [1915] 2 Ch 376 (index to new edition of Bradshaw's railway guide, a new work); *Moffatt and Paige Ltd v Gill & Sons Ltd and Marshall* (1902) 86 LT 465, CA (annotated Shakespeare). It is not, however, sufficient to establish separate copyright if the new edition has only trifling alterations and corrections (*Hedderwick v Griffin* (1841) 3 D 383, Ct of Sess; *Thomas v Turner* (1886) 33 ChD 292, CA), or is a mere reprint (*Hogg v Toye & Co Ltd* [1935] Ch 497 at 522, CA). A book of precedents based on statutory forms, but containing improvements and additions, has been held entitled to copyright: *Alexander v Mackenzie* (1847) 9 D 748, Ct of Sess. As to the separate copyright in published editions of works see PARA 91 post.

9 *British Broadcasting Co v Wireless League Gazette Publishing Co* [1926] Ch 433. As to arrangements generally see *Barfield v Nicholson* (1824) 2 Sim & St 1.

10 *Leslie v Young & Sons* [1894] AC 335, HL.

11 *Leslie v Young & Sons* [1894] AC 335, HL.

12 *GA Cramp & Sons Ltd v Frank Smythson Ltd* [1944] AC 329, [1944] 2 All ER 92, HL.

13 *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 All ER 465, [1964] 1 WLR 273, HL; and see *Industrial Furnaces Ltd v Reaves* [1970] RPC 605 at 624; *Elanco Products Ltd v Mandops (Agrochemical Specialists) Ltd* [1980] RPC 213, CA.

14 For the meaning of 'database' see PARA 731 post.

15 See PARA 730 post. As to the copyright in databases see PARAS 731-735 post.

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69. Notes; selections.

There may be copyright¹ in the notes to a non-copyright text if knowledge, skill and taste are employed in their preparation, notwithstanding that the matter contained in the notes is to be found in standard works on the subject, or that the notes largely consist of apt quotations from non-copyright sources². The headnote of a law report is entitled to protection, for it is a thing on which much skill and exercise of thought are required to express in clear and concise language the principle of law to be deduced from the decision to which it is prefixed³. Selections from shorthand notes of trials have been held to be entitled to copyright as a compilation⁴.

A selection of non-copyright poems which may be made only as the result of careful reading, study and comparison, and the exercise of taste and judgment, is entitled to copyright⁵; for the same reason there is copyright in an arrangement of old music⁶, in a pianoforte score of an opera⁷, in law reports⁸, and in a list of words selected as being suitable for a telegraph code⁹.

1 For the meaning of 'copyright' see PARA 57 ante.

2 *Macmillan & Co Ltd v K & J Cooper* (1923) 93 LJPC 113 at 121, PC; *Black v Murray & Son* (1870) 9 M 341 at 345 per Lord Inglis; *Gangavishnu Shrikisondas v Moreshta Bapuji Hegishte* (1899) ILR 13 Bom 358. See also *Sillitoe v McGraw-Hill Book Co (UK) Ltd* [1983] FSR 545.

3 *Sweet v Benning* (1855) 16 CB 459 at 491 per Crowder J.

4 *Warwick Film Productions Ltd v Eisinger* [1969] 1 Ch 508, [1967] 3 All ER 367. As to compilations see PARA 68 ante.

5 *Macmillan v Suresh Chunder Deb* (1890) ILR 17 Calc 951 at 961 per Wilson J; approved in *Macmillan & Co Ltd v K & J Cooper* (1923) LR 51 Ind App 109, PC.

6 *Austin v Columbia Graphophone Co* (1923) 67 Sol Jo 790.

7 *Wood v Boosey* (1868) LR 3 QB 223, Ex Ch; *Metzler & Co (1920) Ltd v J Curwen & Sons Ltd* (1930) MacG Cop Cas (1928-35) 127.

8 *Sweet v Benning* (1855) 16 CB 459; *Hodges v Welsh* (1840) 2 I Eq R 266; *Jogesh Chandra Chaudhuri v Mohim Chandra Rai* (1914) 18 CWN 1078.

9 *DP Anderson & Co Ltd v Lieber Code Co* [1917] 2 KB 469; *Ager v Peninsular and Oriental Steam Navigation Co* (1884) 26 ChD 637; *Ager v Collingridge* (1886) 2 TLR 291.

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70. Titles.

As a rule a title does not involve literary composition and is not sufficiently substantial to justify a claim to copyright¹ protection, although in particular cases a title may be on so substantial a scale, and of so important a character, as to be a proper subject of protection². Furthermore, a title may be capable of protection on the ground of passing off if its use misrepresents to the public the authorship of a work³.

1 For the meaning of 'copyright' see PARA 57 ante.

2 *Francis Day and Hunter Ltd v Twentieth Century Fox Corpn Ltd* [1940] AC 112 at 123, [1939] 4 All ER 192 at 198, PC; *Dicks v Yates* (1881) 18 ChD 76, CA; *Licensed Victuallers' Newspaper Co v Bingham* (1888) 38 ChD 139, CA; and see *Schove v Schmincké* (1886) 33 ChD 546; *Kelly v Byles* (1880) 13 ChD 682, CA; *Primrose Press Agency Co v Knowles* (1886) 2 TLR 404; *Crotch v Arnold* (1909) 54 Sol Jo 49; *Picture Press Ltd v Ross* (1909) Times, 25 February; *Maxwell v Hogg* (1867) 2 Ch App 307; *William Stevens Ltd v Cassell & Co Ltd* (1913) 29 TLR 272; *Chappell v Sheard* (1855) 2 K & J 117; *McIndoo v Musson Book Co* (1916) 35 OLR 42 (affd 35 OLR 342, CA); *Reid v Bishop* (1885) 4 NZLR 222; *Exxon Corp v Exxon Insurance Consultants International Ltd* [1982] Ch 119, [1981] 3 All ER 241, CA; *Rose v Information Services Ltd* [1987] FSR 254; *Green v Broadcasting Corp of New Zealand* [1989] RPC 469 at 475, NZ CA; *Noah v Shuba* [1991] FSR 14 at 33.

3 In *Dicks v Yates* (1881) 18 ChD 76, CA, it was pointed out that the decision in *Weldon v Dicks* (1878) 10 ChD 247 (that there was copyright in the title 'Trial and Triumph') was erroneous, although the decision might be supported on the ground of passing off (see PARA 14 ante).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/A. LITERARY, DRAMATIC AND MUSICAL WORKS/71. Letters.

71. Letters.

A letter, though merely a business one, is a literary work¹. The copyright² belongs to the writer and not to the receiver³; and the sending of a letter does not confer on the receiver a licence to publish⁴. The property in the paper on which the letter is written, however, passes to the receiver, who may destroy it if he pleases, or take proceedings to recover it if it should pass out of his possession⁵.

The receiver may not copy or publish the letter⁶, but he may communicate the information obtained from its perusal if the letter is not of a private and confidential character⁷. In special circumstances, for the purpose of refuting personal imputations, the receiver of a letter may be permitted to publish it⁸.

1 *British Oxygen Co Ltd v Liquid Air Ltd* [1925] Ch 383; *Tett Bros Ltd v Drake and Gorham Ltd* (1934) MacG Cop Cas (1928-35) 492. For the meaning of 'literary work' see PARA 67 ante.

2 For the meaning of 'copyright' see PARA 57 ante.

3 As there is now statutory copyright in unpublished works (see the Copyright, Designs and Patents Act 1988 s 3(1); and PARA 67 ante) the cases as to the ownership of common law copyright in letters no longer apply (see eg *Gee v Pritchard* (1818) 2 Swan 402; *Macmillan & Co v Dent* [1907] 1 Ch 107, CA). As to ownership generally see PARA 118 et seq post.

4 *Pope v Curl* (1741) 2 Atk 342; *Macmillan & Co v Dent* [1907] 1 Ch 107, CA. See, however, the comments of the court in *Musical Fidelity Ltd v Vickers (t/a Vickers Hi-Fi)* [2002] EWCA Civ 1989, [2002] All ER (D) 09 (Dec).

5 *Oliver v Oliver* (1861) 11 CBNS 139.

6 The writer has the ordinary statutory rights of an owner of copyright: see *British Oxygen Co Ltd v Liquid Air Ltd* [1925] Ch 383.

7 *Philip v Pennell* [1907] 2 Ch 577. As to the right of an author or his personal representatives to restrain the communication of confidential information see *Palin v Gathercole* (1844) 1 Coll 565; and PARA 13 ante.

8 It was doubted by Romer J, in *British Oxygen Co Ltd v Liquid Air Ltd* [1925] Ch 383 at 393-394, whether this right (which was recognised in *Lord and Lady Perceval v Phipps* (1813) 2 Ves & B 19, and in *Labouchère v Hess* (1897) 77 LT 559) now exists in view of the creation of a statutory copyright in letters. As to other special circumstances see *Howard v Gunn* (1863) 32 Beav 462. The writer of a letter cannot, merely by marking it 'private and confidential', prevent its production, if required for the purposes of justice, in a court of law: *Hopkinson v Lord Burghley* (1867) 2 Ch App 447. As to disclosure of documents in court proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 538 et seq.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/A. LITERARY, DRAMATIC AND MUSICAL WORKS/72. Computer programs.

72. Computer programs.

An original¹ computer program is a literary work², as is any preparatory design material³. Computer programs made before 1 August 1989⁴ are also protected as literary works⁵.

The expression 'computer program' is not defined, but a generally accepted meaning is 'a set of instructions which, when incorporated in a machine-readable medium, is capable of causing a machine having information-processing abilities to indicate, perform, or achieve a particular function'⁶.

Source code is protected⁷ and object code probably is⁸. A collection or suite of programs may be protected as a compilation⁹.

1 As to the meaning of 'originality' see PARA 65 ante.

2 See the Copyright, Designs and Patents Act 1988 s 3(1)(b) (as amended); and PARA 67 ante.

3 See *ibid* s 3(1)(c) (as added); and PARA 67 ante.

4 I.e. the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

5 I.e. on or after 1 August 1989, by virtue of *ibid* s 170, Sch 1 para 3 and, before that date, by virtue of the Copyright (Computer Software) Amendment Act 1985 s 1(1) (repealed), which provided that the Copyright Act 1956 (repealed) should apply in relation to computer programs as it applied in relation to literary works and should so apply whether or not copyright subsisted in the program apart from the Copyright (Computer Software) Amendment Act 1985 (repealed). The Copyright (Computer Software) Amendment Act 1985 (repealed) applied to programs made both before and after 16 September 1985: s 1(1) (repealed). See also *Milltronics Ltd v Hycontrol Ltd* [1990] FSR 273, CA. As to the extension of the Copyright Act 1956 (repealed) to dependent territories see the Copyright (Computer Software) (Extension to Territories) Order 1987, SI 1987/2200; and PARA 445 note 12 post.

6 See the World Intellectual Property Organisation Model Provisions s 1.

7 *John Richardson Computers Ltd v Flanders* [1993] FSR 497; *Ibcos Computers Ltd v Barclays Mercantile Highland Finance Ltd* [1994] FSR 275.

8 I.e. as a code, whether expressed in binary notation or in hexadecimal numerical notation: cf *DP Anderson & Co Ltd v Liebig & Co Ltd* [1917] 2 KB 469 (telegraph code consisting of 100,000 five-letter codes). The Copyright, Designs and Patents Act 1988 does not require the work to be in human-readable form: cf *Mackintosh Computers v Apple Computer Inc* (1987) 9 IPR 621, Can CA (distinguishing *Computer Edge Pty Ltd v Apple Computer Inc* [1986] FSR 537, Aust HC).

9 *Ibcos Computers Ltd v Barclays Mercantile Highland Finance Ltd* [1994] FSR 275.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/A. LITERARY, DRAMATIC AND MUSICAL WORKS/73. Dramatic and musical works.

73. Dramatic and musical works.

There is copyright¹ in original² dramatic works³, and such copyright subsists not only in the actual words of the work but in the dramatic incidents created, so that, if these are taken, there may be an infringement although no words are actually copied⁴. There cannot be copyright in mere scenic effects or stage situations which are not reduced into some permanent form⁵.

'Dramatic work' includes a work of dance or mime⁶; but copyright does not subsist in a dramatic work unless and until it is recorded in writing⁷ or otherwise⁸. A film is capable of being a dramatic work although it will not always be so⁹ but the visual experience generated by a video game is not a dramatic work¹⁰.

A ballet may be the subject matter of copyright as a composite work, the elements of which are the music, the story, the choreography, the scenery and the costumes¹¹.

'Musical work' means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music¹²; but copyright does not subsist in a musical work unless and until it is recorded in writing or otherwise¹³. There is copyright in an original musical work, whether it is an original composition, a modern performing edition of an old musical composition¹⁴, or an arrangement of old music¹⁵. Copyright subsists in a work in its entirety, not in parts of or extracts from the work, although if a part of a work is copied, copyright in the work in its entirety may be infringed if the part copied constitutes a substantial part, qualitatively or quantitatively, of the work as a whole¹⁶. There is no copyright in a song as a hybrid entity, but only in the words (as a literary or dramatic work) and music (as a musical work) separately¹⁷.

1 For the meaning of 'copyright' see PARA 57 ante.

2 As to the meaning of 'originality' see PARA 65 ante.

3 See PARA 66 ante.

4 *Rees v Melville* (1914) MacG Cop Cas (1911-16) 168, CA; *Vane v Famous Players Film Co* (1928) MacG Cop Cas (1923-28) 374 (on appeal sub nom *Sutton Vane v Famous Players Film Co Ltd* (1928) MacG Cop Cas (1928-35) 6, CA). See also *Green v Broadcasting Corp of New Zealand* [1989] 2 All ER 1056, PC.

5 *Tate v Fullbrook* [1908] 1 KB 821, CA; *Tate v Thomas* [1921] 1 Ch 503.

6 Copyright, Designs and Patents Act 1988 s 3(1).

7 For the meaning of 'writing' see PARA 66 note 5 ante.

8 Copyright, Designs and Patents Act 1988 s 3(2). There may be copyright in several versions of the same work: see *Brighton v Jones* [2004] EWHC 1157 (Ch), [2005] IP & T 223, [2004] EMLR 507 (copyright subsisted in draft opening script and two subsequent scripts).

9 *Norowzian v Arks Ltd (No 2)* [1999] IP & T 223, CA. As to copyright in films see PARA 85 et seq post.

10 *Nova Productions Ltd v Mazooma Games Ltd* [2006] EWHC 24 (Ch), [2006] All ER (D) 131 (Jan). 'Dramatic work' must be given its natural and ordinary meaning, and that is a work of action, with or without words or music, which is capable of being performed before an audience: *Nova Productions Ltd v Mazooma Games Ltd* supra at 115 per Kitchin J.

11 *Massine v de Basil* (1938) MacG Cop Cas (1936-45) 223.

12 Copyright, Designs and Patents Act 1988 s 3(1).

13 Ibid s 3(2).

14 *Sawkins v Hyperion Records Ltd* [2005] EWCA Civ 565, [2005] 3 All ER 636, [2005] IP & T 923.

15 *Austin v Columbia Graphophone Co* (1923) 67 Sol Jo 790; *Lover v Davidson* (1856) 1 CBNS 182.

16 *Coffey v Warner/Chappell Music Ltd* [2005] EWHC 449 (Ch), [2005] All ER (D) 329 (Mar). It is not open to a claimant to pick and choose the elements of a work upon which he relies in order to make the question of whether a substantial part has been copied more likely to be answered in his favour: *Coffey v Warner/Chappell Music Ltd* supra. As to infringement in relation to a substantial part of a work see PARA 321 post. See also *Baigent v Random House Group Ltd* [2006] EWHC 719 (Ch), [2006] All ER (D) 113 (Apr).

17 *Chappell & Co Ltd v Redwood Music Ltd*, *Redwood Music Ltd v Francis, Day & Hunter Ltd* [1980] 2 All ER 817, [1981] RPC 337, HL. Copyright can subsist in an unfinished version of a work (whether musical or literary); all that is required is that the work is an original work: *Taylor v Rive Droite Music Ltd* [2004] EWHC 1605 (Ch), [2004] All ER (D) 88 (Jul); affd on this point [2005] EWCA Civ 1300, [2005] All ER (D) 72 (Nov).

UPDATE

73 Dramatic and musical works

NOTE 10--*Nova*, cited, affirmed: [2007] EWCA Civ 219, [2007] EMLR 427.

NOTE 16--*Baigent*, cited, affirmed: [2007] EWCA Civ 247, [2007] FSR 579.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/B. ARTISTIC WORKS/74. Artistic works.

B. ARTISTIC WORKS

74. Artistic works.

Copyright¹ subsists in every original² artistic³ work⁴ made on or after 1 August 1989⁵, of which the author⁶ was at the material time⁷ a qualifying person⁸, or if the work satisfies the qualification requirements as regards the country⁹ of first publication¹⁰.

Copyright subsists in such a work made before 1 August 1989 only if it subsisted immediately before that date¹¹. Such a work may, however, subsequently qualify for copyright protection after that date by virtue of first publication as specified above, by virtue of an Order in Council¹² extending the provisions of the Copyright, Designs and Patents Act 1988¹³ or by virtue of the Duration of Copyright and Rights in Performances Regulations 1995¹⁴.

There are provisions for works of joint authorship¹⁵ and works of unknown authorship¹⁶.

Artistic works recording or embodying designs registrable under the Registered Designs Act 1949¹⁷ or which qualify for design right protection¹⁸ may also qualify for copyright protection¹⁹. Copyright does not, however, subsist²⁰ in an artistic work made before 1 June 1957 which at the time when the work was made constituted a design capable of registration under the Registered Designs Act 1949 or under the enactments repealed by that Act, and was used, or intended to be used, as a model or pattern to be multiplied by an industrial process²¹.

The author of a work²² of art in which copyright subsists has a right to a royalty on any resale of the work subsequent to the first transfer of ownership by the author, provided that certain conditions are met²³.

1 For the meaning of 'copyright' see PARA 57 ante.

2 As to the meaning of 'originality' see PARA 65 ante. In the case of an artistic work originality is concerned with that which is visually significant: see *Interlego AC v Tyco Industries Ltd* [1989] AC 217 at 266, [1988] 3 All ER 949 at 974, [1989] RPC 343 at 374, PC; and see the cases cited in PARA 65 note 7 ante. Copying per se, however much skill and labour is devoted to the process, will normally not result in an original work: *Interlego AG v Tyco Industries Ltd* supra; *Reject Shop plc v Robert Manners* [1995] FSR 870 (enlarged photocopies).

3 For the meaning of 'artistic work' see PARA 75 post.

4 See the Copyright, Designs and Patents Act 1988 s 1(1)(a); and PARA 57 ante.

5 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

6 For the meaning of 'author' see PARA 110 post.

7 As to the material time see the Copyright, Designs and Patents Act 1988 s 154(4); and PARA 60 note 3 ante.

8 See *ibid* ss 153(1)(a), 154(1); and PARAS 59-60 ante.

9 For the meaning of 'country' see PARA 59 note 4 ante.

10 See the Copyright, Designs and Patents Act 1988 ss 153(1)(b), 155(1); and PARAS 59, 61 ante.

11 *Ibid* s 170, Sch 1 para 5(1). As to subsistence under the Copyright Act 1956 (repealed) see PARA 41 ante. As respects works published before 1 July 1912 (ie the date on which the Copyright Act 1911 came into force in the United Kingdom: see PARA 30 ante) the substituted right conferred by the Copyright Act 1911 (see PARA 31 ante) must have subsisted in the work immediately before 1 June 1957 (ie the date on which the Copyright Act

1956 came into force in the United Kingdom: see PARA 35 ante) in order to acquire copyright under the Copyright Act 1956 (repealed): see s 50(1), Sch 7 paras 34, 35 (repealed).

12 Ie by virtue of an order made under the Copyright, Designs and Patents Act 1988 s 159: see PARA 447 post.

13 Ibid Sch 1 para 5(2).

14 Ie by virtue of the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended): see PARA 93 post.

15 See PARA 113 post.

16 See PARA 114 post.

17 As to registered designs under the Registered Designs Act 1949 see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 681 et seq.

18 As to design right see PARA 501 et seq post.

19 See, however, the Copyright, Designs and Patents Act 1988 s 51 (which has the effect of preventing such copyrights being asserted so as to prevent the making of articles to the design or the copying of such articles); and PARA 376 post.

20 Ie by virtue of the Copyright, Designs and Patents Act 1988.

21 Ibid Sch 1 para 6(1). For these purposes, a design is deemed to be used as a model or pattern to be multiplied by any industrial process: (1) when the design is reproduced or is intended to be reproduced on more than 50 single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set of articles as defined in the Registered Designs Act 1949 s 44(1); or (2) when the design is to be applied to: (a) printed paper hangings; (b) carpets, floor cloths or oil cloths, manufactured or sold in lengths or pieces; (c) textile piece goods, or textile goods manufactured or sold in lengths or pieces; or (d) lace, not made by hand: Copyright, Designs and Patents Act 1988 Sch 1 para 6(2).

22 For the meaning of 'work' see PARA 777 post.

23 See the Artist's Resale Right Regulations 2006, SI 2006/346; and PARA 774 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/B. ARTISTIC WORKS/75. Meaning of 'artistic work'.

75. Meaning of 'artistic work'.

'Artistic work' means:

- 40 (1) a graphic work¹, photograph², sculpture³ or collage⁴, irrespective of artistic quality⁵;
- 41 (2) a work of architecture being a building⁶ or a model for a building⁷; or
- 42 (3) a work of artistic craftsmanship⁸.

1 For the meaning of 'graphic work' see PARA 76 post.

2 For the meaning of 'photograph' see PARA 77 post.

3 For the meaning of 'sculpture' see PARA 78 post.

4 The expression 'collage' is not defined in the Copyright, Designs and Patents Act 1988. The definition in the Oxford English Dictionary (2nd Edn) of 'an abstract form of art in which photographs, pieces of paper, newspaper cuttings, string etc are placed in juxtaposition and glued to the pictorial surface' was applied in *Creation Records Ltd v News Group Newspapers Ltd* [1997] EMLR 444 (where it was held that a mere collection of random, unrelated and unfixed objects was not a collage).

5 Copyright, Designs and Patents Act 1988 s 4(1)(a). The provision for the disregarding of artistic merit is in accordance with the decisions of the courts: *Kenrick & Co v Lawrence & Co* (1890) 25 QBD 99 (a coarse representation of a common object); *Hildesheimer and Faulkner v Dunn & Co* (1891) 64 LT 452 (the bare design of a hand); *Waters v M Alen Huygen & Co* (1923) MacG Cop Cas (1923-28) 17 (diagram illustrating a method of measuring shoe heels); *Millar and Lang Ltd v Polak* [1908] 1 Ch 433 (Christmas cards); *Stephenson, Blake & Co v Grant, Legros & Co* (1916) 86 LJ Ch 93 (on appeal (1917) 86 LJ Ch 439, CA) (drawings of letters for a typeface; order discharged on appeal on the ground that it was not a proper case for a declaratory judgment); *Tavener Rutledge Ltd v Specters Ltd* [1959] RPC 83 (on appeal [1959] RPC 355, CA) (label on tin of sweets); *Lerose Ltd v Hawick Jersey International Ltd* [1974] RPC 42, [1973] CMLR 83 (a point pattern); *British Northrop Ltd v Texteam Blackburn Ltd* [1974] RPC 57 (drawings of machine parts); *Charles Walker & Co Ltd v British Picker Co Ltd* [1961] RPC 57 (label); *LB (Plastics) Ltd v Swish Products Ltd* [1979] RPC 551 at 611, HL (parts for knock-down furniture); *British Leyland Motor Corp v Armstrong Patents Co Ltd* [1986] AC 577, [1986] 1 All ER 850, [1986] RPC 279, HL (car exhaust systems).

6 For the meaning of 'building' see PARA 79 post.

7 Copyright, Designs and Patents Act 1988 s 4(1)(b).

8 Ibid s 4(1)(c). For the meaning of 'work of artistic craftsmanship' see PARA 80 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/B. ARTISTIC WORKS/76. Meaning of 'graphic work'.

76. Meaning of 'graphic work'.

'Graphic work' includes:

- 43 (1) any painting¹, drawing², diagram³, map⁴, chart⁵ or plan; and
- 44 (2) any engraving⁶, etching, lithograph, woodcut or similar work⁷.

1 See *Merchandising Corp'n of America Inc v Harpbond Ltd* [1983] FSR 32 at 42, CA (grease paint make-up on pop star's face held not to be capable of copyright protection); *Nova Productions Ltd v Mazooma Games Ltd* [2006] EWHC 24 (Ch), [2006] All ER (D) 131 (Jan) (bitmap files made using various computer tools creating a visual effect very similar to that of a painting or drawing were graphic works; and composite frames generated by the computer program using the bitmap files were also artistic works).

2 A variety of types of drawings has been held entitled to copyright protection: architects' drawings (*Meikle v Maufe* [1941] 3 All ER 144; *Blair v Osborne and Tomkins* [1971] 2 QB 78, [1971] 1 All ER 468; *Cala Homes (South) Ltd v Alfred McAlpine Homes East Ltd* [1995] FSR 818; *Jones v Tower Hamlets London Borough Council* [2001] IP & T 341, [2001] RPC 407); drawings of garments and cutting patterns (*Radley Gowns Ltd v Costas Spyrou (t/a 'Touch of Class' and 'Fiesta Girl')* [1975] FSR 455; *J Bernstein Ltd v Sydney Murray Ltd* [1981] RPC 303; *Gleeson and Gleeson Shirt Co Ltd v HR Denne Ltd* [1975] RPC 471, CA; *Merlet v Mothercare plc* [1986] RPC 115 at 129, CA; *LA Gear Inc v Hi-Tec Sports plc* [1992] FSR 121); drawings of patterns for bedspreads and cushion covers (*Vermaat v Boncrest Ltd* [2001] FSR 43, [2000] All ER (D) 737); trade marks (*KARO STEP Trade Mark* [1977] RPC 255; *H Klarmann Ltd v Henshaw Linen Supplies* [1960] RPC 150); cartoon characters (*King Features Syndicate Inc v O and M Kleeman Ltd* [1941] AC 417, [1941] 2 All ER 403, HL ('Popeye'); *Mirage Studios v Counter-Feat Clothing Co Ltd* [1991] FSR 145 ('Teenage Mutant Ninja Turtles')); engineering drawings (*Dorling v Honnor Marine Ltd* [1965] Ch 1, [1964] 1 All ER 241, CA (kit of parts for self-build boat); *Temple Instruments Ltd v Hollis Heels Ltd* [1973] RPC 15 (divan legs); *Merchant Adventurers Ltd v M Grew & Co Ltd (t/a Emess Lighting)* [1972] Ch 242, [1973] RPC 1 (light fittings); *British Northrop Ltd v Texteam Ltd* [1974] RPC 57 (parts for looms); *LB (Plastics) Ltd v Swish Products Ltd* [1979] RPC 551, HL (parts for knock-down furniture); *British Leyland Motor Corp'n v Armstrong Patents Co Ltd* [1986] AC 577, [1986] 1 All ER 850, [1986] RPC 279 at 319, HL (spare parts for cars); *Billhöfer Maschinenfabrik GmbH v TH Dixon & Co Ltd* [1990] FSR 105 (film laminating machine)); circuit diagrams (*Anacon Corp'n Ltd v Environmental Research Technology Ltd* [1994] FSR 659); toys (*Politechnika Ipari Szovetkezet v Dallas Print Transfers Ltd* [1982] FSR 529 ('Rubik Cube')).

See, however, the Copyright, Designs and Patents Act 1988 ss 51, 52, which have the effect in many cases of preventing the copyrights in such drawings made on or after 1 August 1989 from being asserted so as to prevent the making of articles in accordance with the drawings or the copying of such articles: see PARAS 376, 378 post. For transitional provisions relating to drawings made before that date see PARA 377 post.

3 Drawings and diagrams are to be interpreted in accordance with any legends or information written on them: *Merchant Adventurers Ltd v M Grew & Co Ltd (t/a Emess Lighting)* [1973] RPC 1; *Temple Instruments Ltd v Hollis Heels Ltd* (1971) [1973] RPC 15.

4 See *Geographia Ltd v Penguin Books Ltd* [1985] FSR 208 (map of the world).

5 See *MacMillan Publishers Ltd v Thomas Reed Publications Ltd* [1993] FSR 455 (maritime charts).

6 Modern decisions have tended to give a very extended meaning to the word 'engraving'. Thus the following have been held to be engravings: rubber stereo used to print images on heat transfer paper (*James Arnold and Co Ltd v Mifern Ltd* [1980] RPC 397); and a mould for making the 'Frisbee' flying toy (*Wham-O Manufacturing Co v Lincoln Industries Ltd* [1985] RPC 127, NZ CA).

7 Copyright, Designs and Patents Act 1988 s 4(2).

UPDATE

76 Meaning of 'graphic work'

NOTE 1--*Nova*, cited, affirmed: [2007] EWCA Civ 219, [2007] EMLR 427.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/B. ARTISTIC WORKS/77. Meaning of 'photograph'.

77. Meaning of 'photograph'.

'Photograph' means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film¹.

¹ Copyright, Designs and Patents Act 1988 s 4(2). What is protected by the copyright in a photograph is not necessarily every outline in it, but rather those groupings or features selected or arranged by the photographer: *Bauman v Fussell* (1953) [1978] RPC 485, CA. See also *Lady Anne Tennant v Associated Newspapers Group Ltd* [1979] FSR 298; *Apple Corps Ltd v Cooper* [1993] FSR 286; *Mail Newspapers plc v Express Newspapers plc* [1987] FSR 90; *Shelley Films Ltd v Rex Features Ltd* [1994] EMLR 134; *Antiquesportfolio.com plc v Rodney Fitch & Co Ltd* [2001] IP & T 1375, [2001] FSR 345. For the meaning of 'film' see PARA 86 post. Films are the subject of a distinct form of copyright: see PARA 85 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/B. ARTISTIC WORKS/78. Meaning of 'sculpture'.

78. Meaning of 'sculpture'.

'Sculpture' includes a cast or model made for purposes of sculpture¹.

¹ Copyright, Designs and Patents Act 1988 s 4(2). The following have been treated as sculptural works: toy soldiers (*Britain v Hanks Bros & Co* (1902) 86 LT 765; *Woods v Stoddards Ltd* (1931) MacG Cop Cas (1928-35) 294); wall plaques (*Usher v Barlow* (1952) 69 RPC 27 at 29, CA); medals and coins (*Reliance (Nameplates) Ltd v Art Jewels Ltd* (1953) 70 RPC 86); plaster casts of toasted sandwiches (*Breville Europe plc v Thorn EMI Domestic Appliances Ltd* [1995] FSR 77); latex prostheses for 'Frankenstein' character in film (*Shelley Films Ltd v Rex Features Ltd* [1994] EMLR 134). Dental impression trays have been held not to be sculptures: *J & S Davis (Holdings) Ltd v Wright Health Group Ltd* [1988] RPC 403. See also *Metix (UK) Ltd v GH Maughan (Plastics) Ltd* [1997] FSR 718.

See, however, the Copyright, Designs and Patents Act 1988 s 51, which has the effect in many cases of preventing the copyrights in such sculptures made on or after 1 August 1989 from being asserted so as to prevent the making of articles in accordance with the sculpture or the copying of such articles: see PARA 376 post. For transitional provisions relating to sculptures made before that date see PARA 377 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/B. ARTISTIC WORKS/79. Meaning of 'work of architecture'.

79. Meaning of 'work of architecture'.

A work of architecture, being a building or a model for a building, qualifies for copyright protection as an artistic work¹. This copyright is separate from and additional to the copyright which exists in architects' plans², which are protected as graphic works³. 'Building' includes any fixed structure⁴, and a part of a building or structure⁵.

1 See PARA 75 ante.

2 *Meikle v Maufe* [1941] 3 All ER 144.

3 For the meaning of 'graphic work' see PARA 76 ante.

4 Eg a bridge or steelwork for a sports stadium: *Netupsky v Dominion Bridge Co Ltd* (1969) 5 DLR (3d) 195; on appeal [1972] SCR 368, Can SC.

5 Copyright, Designs and Patents Act 1988 s 4(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/B. ARTISTIC WORKS/80. Meaning of 'work of artistic craftsmanship'.

80. Meaning of 'work of artistic craftsmanship'.

The expression 'work of artistic craftsmanship' is not defined in the Copyright, Designs and Patents Act 1988 and there is no judicially agreed formula of general application for determining whether a work is one of artistic craftsmanship; the word 'artistic' is to be given its ordinary and natural meaning, and it is the function of the court to decide on the evidence whether the work is a work of artistic craftsmanship¹. It must be possible to say that the author was both an artist and a craftsman².

¹ See *George Hensher Ltd v Restawile Upholstery (Lancs) Ltd* [1974] 2 All ER 420, [1974] 2 WLR 700, HL. As to the hearing of expert evidence see *George Hensher Ltd v Restawile Upholstery (Lancs) Ltd* supra at 426 and 707 per Lord Morris of Borth-y-Gest, at 431 and 712 per Viscount Dilhorne, at 437 and 719 per Lord Simon of Glaisdale, and at 439 and 721-722 per Lord Kilbrandon. As to the weight to be given to the intention of the maker of the work see *George Hensher Ltd v Restawile Upholstery (Lancs) Ltd* supra at 423-424 and 704 per Lord Reid, at 425 and 707 per Lord Morris of Borth-y-Gest, at 437 and 719 per Lord Simon of Glaisdale, and at 438 and 721 per Lord Kilbrandon. In that case mere originality of design and eye appeal were held insufficient to make the prototype of a new suite of furniture a work of artistic craftsmanship; the question whether the prototype which was a mere 'knock up' could be a work of craftsmanship was not decided. See also *Guild v Eskandar Ltd* [2002] EWCA Civ 316, [2003] FSR 23, [2002] All ER (D) 202 (Mar) (garment design); *Shelley Films Ltd v Rex Features Ltd* [1994] EMLR 134 (arguable that a film set and costumes are works of artistic craftsmanship); *Merlet v Mothercare plc* [1986] RPC 115 (baby cape); *Radley Gowns Ltd v Costas Spyrou (t/a as 'Touch of Class' and 'Fiesta Girl')* [1975] FSR 455 (Ossie Clark dress); *Burke and Margot Burke Ltd v Spicers Dress Designs* [1936] Ch 400 at 408, [1936] 1 All ER 99 at 101 per Clauson J.

² *Vermaat v Boncrest Ltd* [2001] FSR 43, [2000] All ER (D) 737 (in which the court adopted the approach in *Bonz Group (Pty) Ltd v Cooke* [1994] NZLR 216, NZHC). For the meaning of 'author' see PARA 110 post.

UPDATE

80 Meaning of 'work of artistic craftsmanship'

NOTE 1--See *Lucasfilm Ltd v Ainsworth* [2008] EWHC 1878 (Ch), [2009] IP & T 401 (no hard and fast rules as to what constituted a sculpture) (reversed in part on other grounds: [2009] EWCA Civ 1328, [2010] FSR 270, [2010] IP & T 391).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/B. ARTISTIC WORKS/81. Copyright and designs.

81. Copyright and designs.

Certain designs¹ recorded or embodied in artistic works² may also be protected by the Registered Designs Act 1949³ or may enjoy design right protection under the Copyright, Designs and Patents Act 1988⁴. The copyright protection⁵ afforded to such artistic works does not then extend to prevent the making of articles to that design or the copying of articles made to the design⁶.

1 As to works created before 1 June 1957 see PARA 82 post.

2 For the meaning of 'artistic work' see PARA 75 ante.

3 The registration of a design under the Registered Designs Act 1949 gives to the registered proprietor the right in the registered design: see s 7(1) (as amended); and PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 762. Not all designs registrable under the Registered Designs Act 1949 are artistic works within the meaning of the Copyright, Designs and Patents Act 1988: see *George Hensher Ltd v Restawile Upholstery (Lancs) Ltd* [1976] AC 64 at 84-85, [1974] 2 All ER 420 at 429, HL, per Viscount Dilhorne, at 92 and 435 per Lord Simon of Glaisdale, and at 98 and 440 per Lord Kilbrandon; cf PARA 74 ante. As to registered designs generally see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 681 et seq.

4 As to design right see PARA 501 et seq post.

5 As to copyright in artistic works see PARA 74 ante.

6 See the Copyright, Designs and Patents Act 1988 s 51 (as amended); and PARA 376 post. See also *Lambretta Clothing Co Ltd v Teddy Smith (UK) Ltd* [2004] EWCA Civ 886, [2005] IP & T 609, [2005] RPC 88.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/B. ARTISTIC WORKS/82. Works created before 1 June 1957.

82. Works created before 1 June 1957.

Under the provisions of the Copyright Act 1911, copyright could not exist in a design capable of registration under the Registered Designs Act 1949¹ unless the design, though capable of registration, was not used or intended to be used as a model or pattern to be multiplied by any industrial process². Whether a work was capable of registration as a design was solely a matter of law³.

This position is preserved by the Copyright, Designs and Patents Act 1988⁴.

1 The reference in the Copyright Act 1911 to the Patents and Designs Act 1907 was deemed to be a reference to the Registered Designs Act 1949: Interpretation Act 1889 s 38(1) (repealed). See also *Usher v Barlow* [1952] Ch 255, [1952] 1 All ER 205, CA. As to such registrability see eg *Amp Inc v Utilux Pty Ltd* [1972] RPC 103, HL; *Interlego AG v Tyco Industries Inc* [1989] AC 217, [1988] 3 All ER 949, PC; and see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 740 et seq.

2 Copyright Act 1911 s 22(1) (repealed). A model or pattern was deemed to have been intended for industrial use if the design: (1) was reproduced or was intended to be reproduced on more than 50 single articles, unless the articles formed a single set; or (2) was to be applied to: (a) printed paper hangings; (b) carpets, floorcloths or oilcloths manufactured or sold in lengths or pieces; (c) textile piece goods, textile goods manufactured or sold in lengths or pieces; or (d) lace not made by hand: Copyright (Industrial Designs) Rules 1949, SI 1949/2367, r 2 (revoked). The intention was that of the artist at the time at which the work was created: *King Features Syndicate Inc v O and M Kleeman Ltd* [1941] AC 417, [1941] 2 All ER 403, HL; *Ware v Anglo-Italian Commercial Agency Ltd (No 1)* (1922) MacG Cop Cas (1917-23) 346.

3 In *Pyram Ltd v Models (Leicester) Ltd* [1930] 1 Ch 639 at 648, Clauson J declined to allow the (successful) defendants their costs of calling a patent expert to say that the work in question in that case was capable of registration as a design, although such a witness had been called and relied on by Sankey J in *Con Planck Ltd v Kolynos Inc* [1925] 2 KB 804. It has been held that the court is not bound to consider a design incapable of being registered solely because of the refusal of the comptroller to register it: see *Usher v Barlow* as reported in [1952] 1 All ER 205 at 210, CA. As to registration of designs by the comptroller see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 681 et seq.

4 See the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 6(1); and PARA 74 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/C. SOUND RECORDINGS AND FILMS/83. Sound recordings.

C. SOUND RECORDINGS AND FILMS

83. Sound recordings.

Copyright¹ subsists in every sound recording² made on or after 1 August 1989³, the author⁴ of which was at the material time⁵ a qualifying person⁶, or if it satisfies the qualification requirements as regards the country⁷ of first publication⁸.

Copyright subsists in a sound recording made before 1 August 1989 only if it subsisted immediately before that date⁹. A sound recording may, however, subsequently qualify for copyright protection after that date by virtue of first publication as specified above, by virtue of an Order in Council¹⁰ extending the provisions of the Copyright, Designs and Patents Act 1988¹¹ or by virtue of the Duration of Copyright and Rights in Performances Regulations 1995¹².

Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording¹³.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'sound recording' see PARA 84 post. As to the special treatment of film soundtracks see PARA 87 post.

3 I.e. the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

4 For the meaning of 'author' see PARA 110 post.

5 As to the material time see the Copyright, Designs and Patents Act 1988 s 154(5)(a); and PARA 60 note 3 ante. If the making of the sound recording extended over a period, it is taken to have been made when its making was completed: s 170, Sch 1 para 1(3).

6 See *ibid* ss 153(1)(a), 154(1); and PARAS 59-60 ante.

7 For the meaning of 'country' see PARA 59 note 4 ante.

8 See the Copyright, Designs and Patents Act 1988 ss 153(1)(b), 155(1); and PARAS 59, 61 ante.

9 *Ibid* Sch 1 para 5(1). As to subsistence under the Copyright Act 1956 (repealed) see PARA 42 ante.

10 I.e. by virtue of an order made under the Copyright, Designs and Patents Act 1988 s 159: see PARA 447 post.

11 *Ibid* Sch 1 para 5(2).

12 I.e. by virtue of the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended): see PARA 93 post.

13 Copyright, Designs and Patents Act 1988 s 5A(2) (added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 9(1)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/C. SOUND RECORDINGS AND FILMS/84. Meaning of 'sound recording'.

84. Meaning of 'sound recording'.

'Sound recording' means:

- 45 (1) a recording of sounds, from which the sounds may be reproduced¹; or
- 46 (2) a recording of the whole or any part of a literary², dramatic³ or musical⁴ work, from which sounds reproducing the work or part may be produced⁵,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced⁶.

1 Copyright, Designs and Patents Act 1988 s 5A(1)(a) (s 5A added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 9(1)).

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 Copyright, Designs and Patents Act 1988 s 5A(1)(b) (as added: see note 1 supra).

6 Ibid s 5A(1) (as added: see note 1 supra). As to the copyright in sound recordings see PARA 83 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/C. SOUND RECORDINGS AND FILMS/85. Films.

85. Films.

Copyright¹ subsists in every film² made on or after 1 August 1989³, of which the author⁴ was at the material time⁵ a qualifying person⁶, or if it satisfies the qualification requirements as regards the country⁷ of first publication⁸.

Copyright subsists in a film made before 1 August 1989 and on or after 1 June 1957⁹ only if it subsisted immediately before 1 August 1989¹⁰. A film may, however, subsequently qualify for copyright protection after that date by virtue of first publication as specified above, by virtue of an Order in Council¹¹ extending the provisions of the Copyright, Designs and Patents Act 1988¹² or by virtue of the Duration of Copyright and Rights in Performances Regulations 1995¹³.

Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film¹⁴.

No copyright subsists in a film, as such, made before 1 June 1957¹⁵. However, where a film made before that date was an original dramatic work within the meaning of the Copyright Act 1911¹⁶, the copyright provisions of the Copyright, Designs and Patents Act 1988 have effect in relation to the film as if it was an original dramatic work¹⁷. In addition, the copyright provisions have effect in relation to photographs¹⁸ forming part of a film made before 1 June 1957 as they have effect in relation to photographs not forming part of a film¹⁹.

1 For the meaning of 'copyright' see PARA 57 ante.

2 See the Copyright, Designs and Patents Act 1988 s 1(1)(b); and PARA 57 ante. For the meaning of 'film' see PARA 86 post. As to the special treatment of film soundtracks see PARA 87 post.

3 I.e. the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

4 For the meaning of 'author' see PARA 110 post.

5 As to the material time see the Copyright, Designs and Patents Act 1988 s 154(5)(a); and PARA 60 note 3 ante. If the making of the film extended over a period, it is taken to have been made when its making was completed: s 170, Sch 1 para 1(3).

6 See *ibid* ss 153(1)(a), 154(1); and PARAS 59-60 ante.

7 For the meaning of 'country' see PARA 59 note 4 ante.

8 See the Copyright, Designs and Patents Act 1988 ss 153(1)(b), 155(1); and PARAS 59, 61 ante. Copyright may also subsist in a film as a dramatic work: see *Norowzian v Arks Ltd (No 2)* [1999] IP & T 223, CA; and PARA 73 ante.

9 I.e. the date on which the Copyright Act 1956 (repealed) came into force in the United Kingdom: see PARA 35 ante.

10 Copyright, Designs and Patents Act 1988 Sch 1 para 5(1). As to subsistence under the Copyright Act 1956 (repealed) see PARA 43 ante.

11 I.e. by virtue of an order made under the Copyright, Designs and Patents Act 1988 s 159: see PARA 447 post.

12 *Ibid* Sch 1 para 5(2).

13 I.e. by virtue of the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended): see PARA 93 post.

14 Copyright, Designs and Patents Act 1988 s 5B(4) (added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 9(1)).

15 Copyright, Designs and Patents Act 1988 Sch 1 para 7(1).

16 See PARA 28 ante.

17 Is within the meaning of the Copyright, Designs and Patents Act 1988: Sch 1 para 7(2). For the meaning of 'dramatic work' see PARA 73 ante.

18 For the meaning of 'photograph' see PARA 77 ante.

19 Copyright, Designs and Patents Act 1988 Sch 1 para 7(3). As to copyright in photographs see PARA 74 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/C. SOUND RECORDINGS AND FILMS/86. Meaning of 'film'.

86. Meaning of 'film'.

'Film' means a recording on any medium from which a moving image may by any means be produced¹.

¹ Copyright, Designs and Patents Act 1988 s 5B(1) (added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 9(1)). As to the special treatment of film soundtracks see PARA 87 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/C. SOUND RECORDINGS AND FILMS/87. Film soundtracks.

87. Film soundtracks.

Film¹ soundtracks made on or after 1 January 1996² are protected by film copyright³ when accompanying the film⁴ and by sound recording copyright⁵ in all other circumstances⁶. There are thus two independent copyrights protecting the film soundtrack and it is necessary to ascertain whether the conditions for subsistence of copyright are satisfied both in respect of the sound recording copyright⁷ and the film copyright⁸.

Film soundtracks made before 1 January 1996 are, on and after that date, treated in the same way as film soundtracks made on or after that date⁹. Film soundtracks made between 1 August 1989¹⁰ and 31 December 1995 inclusive were treated purely as sound recordings for the purpose of subsistence of film copyright¹¹. It is now necessary also to ascertain whether the conditions for subsistence of film copyright were satisfied¹². Film soundtracks¹³ made between 1 June 1957¹⁴ and 31 July 1989 inclusive were treated prior to 1 January 1996 as having sound recording copyright only¹⁵. However, the sound recording copyright in such soundtracks subsisted only if copyright subsisted in the film immediately before 1 August 1989¹⁶. Again, it is necessary to ascertain whether the separate film copyright subsisted in the film and this was so only if such film copyright subsisted immediately before 1 August 1989¹⁷. The position of film soundtracks made before 1 June 1957 and treated as sound recordings is uncertain¹⁸. No film copyright, as such, subsists in a film made before 1 June 1957¹⁹.

1 For the meaning of 'film' see PARA 86 ante.

2 I.e. the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).

3 As to the copyright in films see PARA 85 ante.

4 Copyright, Designs and Patents Act 1988 s 5B(2) (s 5B added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 9(1)). Without prejudice to the generality of the Copyright, Designs and Patents Act 1988 s 5B(2) (as added), where s 5B(2) (as added) applies: (1) references in Pt I (ss 1-179) (as amended) to showing a film include playing the film soundtrack to accompany the film (s 5B(3)(a) (as so added)); and (2) references to playing a sound recording do not include playing the film soundtrack to accompany the film (s 5B(3)(b) (as so added)).

5 As to the copyright in sound recordings see PARA 83 ante. For the meaning of 'sound recording' see PARA 84 ante.

6 See the Copyright, Designs and Patents Act 1988 s 5B(5) (as added: see note 4 supra).

7 See PARA 83 ante.

8 See PARA 85 ante.

9 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 26(1).

10 I.e. the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

11 Ibid s 5(1) (as originally enacted); s 5B(2), (5) (as added (see note 4 supra); applied to existing soundtracks as from 1 January 1996 by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 26(1)).

12 See PARA 85 ante.

13 le those to which the Copyright Act 1956 s 13(9) (repealed) applied, namely the sounds embodied in any soundtrack associated with the film.

14 le the date on which the Copyright Act 1956 (repealed) came into force in the United Kingdom: see PARA 35 ante. See also the text to note 19 infra.

15 Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 8(1); Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 26(1).

16 Copyright, Designs and Patents Act 1988 Sch 1 paras 5(1), 8(2)(a). As to whether such film copyright subsisted see the Copyright Act 1956 s 13 (as amended; repealed); and PARA 43 ante. There are special provisions as to duration, authorship and ownership and acts done before 1 August 1989 in relation to such film soundtracks: see the Copyright, Designs and Patents Act 1988 Sch 1 para 8(2).

17 Ibid Sch 1 para 5(1). See also note 16 supra.

18 The position appears to be as follows. The Copyright Act 1956 (repealed) conferred a new film copyright on cinematograph films, which were defined to include soundtracks (see PARA 37 note 8 ante); but Sch 7 para 14 (repealed) provided that s 13 (as amended; repealed) did not apply to films made before its commencement date. Schedule 7 para 11 (repealed) conferred sound recording copyright in sound recordings made before that date, but the definition of sound recordings in s 12(9) (repealed) excluded film soundtracks (see PARA 37 note 7 ante). Thus film soundtracks appear to be excluded from protection by the combined effect of those provisions. Further, under the Copyright Act 1911 s 19(1) (repealed) film soundtracks were treated as if they were musical works but there was no similar deeming provision in the Copyright Act 1956 (repealed). It appears, therefore, that films made before the Copyright Act 1956 (repealed) came into force have inadvertently been deprived of protection. Unless the soundtrack was protected under the Copyright Act 1956, it will not acquire protection under the Copyright, Designs and Patents Act 1988 Sch 1 para 5(1) unless it subsequently qualifies for protection (see PARAS 83, 85 ante).

19 Ibid Sch 1 para 7(1).

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D. BROADCASTS

88. Broadcasts.

Copyright¹ subsists in every broadcast² made on or after 1 August 1989³, the author⁴ of which was at the material time⁵ a qualifying person⁶, or if it satisfies the qualification requirements as regards the place of transmission⁷.

Copyright subsists in a broadcast made before 1 August 1989 only if it subsisted immediately before that date⁸. A broadcast may, however, subsequently qualify for copyright protection on or after that date by virtue of an Order in Council⁹ extending the provisions of the Copyright, Designs and Patents Act 1988¹⁰.

Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast¹¹.

1 For the meaning of 'copyright' see PARA 57 ante.

2 See the Copyright, Designs and Patents Act 1988 s 1(1)(b); and PARA 57 ante. For the meaning of 'broadcast' see PARA 89 post.

3 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

4 For the meaning of 'author' see PARA 110 post.

5 As to the material time see the Copyright, Designs and Patents Act 1988 s 154(5)(b); and PARA 60 note 3 ante.

6 See *ibid* ss 153(1)(a), 154(1); and PARAS 59-60 ante.

7 See *ibid* ss 153(1)(c), 156(1); and PARAS 59, 62 ante.

8 *Ibid* s 170, Sch 1 para 5(1). As to subsistence under the Copyright Act 1956 (repealed) see PARA 44 ante. However, no copyright subsists in a wireless broadcast made before 1 June 1957, or a broadcast by cable made before 1 January 1985: Copyright, Designs and Patents Act 1988 Sch 1 para 9 (substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 16(a)). 'Wireless broadcast' means a broadcast by means of wireless telegraphy: Copyright, Designs and Patents Act 1988 s 178 (definition added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 15(3)). 'Wireless telegraphy' means the sending of electro-magnetic energy over paths not provided by a material substance constructed or arranged for that purpose, but does not include the transmission of microwave energy between terrestrial fixed points: Copyright, Designs and Patents Act 1988 s 178 (definition amended by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 8).

9 Ie by virtue of an order made under the Copyright, Designs and Patents Act 1988 s 159: see PARA 447 post.

10 *Ibid* Sch 1 para 5(2)(b).

11 *Ibid* s 6(6) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). As to infringement see PARA 311 et seq post.

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89. Meanings of 'broadcast' and 'broadcasting'.

'Broadcast' means an electronic¹ transmission of visual images, sounds or other information which:

- 47 (1) is transmitted for simultaneous reception² by members of the public and is capable of being lawfully received³ by them⁴; or
- 48 (2) is transmitted at a time determined solely by the person making the transmission⁵ for presentation to members of the public⁶,

and which is not excepted from the definition; and references to broadcasting are to be construed accordingly⁷.

Any internet transmission is excepted from the definition of 'broadcast' unless it is: (a) a transmission taking place simultaneously on the internet and by other means⁸; (b) a concurrent transmission of a live event⁹; or (c) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person¹⁰.

The relaying of a broadcast by reception and immediate retransmission is regarded as a separate act of broadcasting from the making of the broadcast which is so retransmitted¹¹.

1 For the meaning of 'electronic' see PARA 184 note 2 post.

2 References to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system: Copyright, Designs and Patents Act 1988 s 6(5). 'Telecommunications system' means a system for conveying visual images, sounds or other information by electronic means: s 178.

3 An encrypted transmission is to be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission: *ibid* s 6(2). As to offences relating to the fraudulent reception of programmes and dealings in unauthorised decoders see PARA 491 et seq post.

4 *Ibid* s 6(1)(a) (s 6(1) substituted, and s 6(1A) added, by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 4(a)). The reception by a hotel establishment of satellite or terrestrial television signals and their distribution by cable to the various rooms of that hotel is an act of communication to the public or reception by the public which is not governed by EC Council Directive 93/83 (OJ L 248, 6.10.1993, p 15) on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, and must consequently be decided in accordance with national law: Case C-293/98 *Entidad de Gestión de Derechos de los Productores Audiovisuales (Egeda) v Hostelería Asturiana SA (Hoasa)* [2000] ECR I-629, ECJ.

5 References to the person making a broadcast or a transmission which is a broadcast are references to the person transmitting the programme, if he has responsibility to any extent for its contents, and to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission: Copyright, Designs and Patents Act 1988 s 6(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 4(b)). References to a programme, in the context of broadcasting, are references to any item included in a broadcast: Copyright, Designs and Patents Act 1988 s 6(3). Section 6(3) has effect subject to s 6A (as added) (safeguards in case of certain satellite broadcasts: see PARA 90 post): s 6(4A) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 6(1)).

6 Copyright, Designs and Patents Act 1988 s 6(1)(b) (as substituted: see note 4 supra).

- 7 Ibid s 6(1) (as substituted: see note 4 supra).
- 8 Ibid s 6(1A)(a) (as added: see note 4 supra).
- 9 Ibid s 6(1A)(b) (as added: see note 4 supra).
- 10 Ibid s 6(1A)(c) (as added: see note 4 supra).
- 11 Ibid s 6(5A) (added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 4(d)).

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90. Safeguards in relation to certain satellite broadcasts.

Where, on or after 1 December 1996¹, the place from which a broadcast² by way of satellite transmission is made³ is located in a country⁴ other than an EEA state⁵ and the law of that country fails to provide at least the following level of protection:

- 49 (1) exclusive rights in relation to wireless broadcasting equivalent to those conferred on the authors of literary⁶, dramatic⁷, musical⁸ and artistic⁹ works, films¹⁰ and broadcasts by the provisions¹¹ relating to infringement by communication to the public¹²;
- 50 (2) a right in relation to live wireless broadcasting equivalent to that conferred on a performer under the provisions¹³ relating to the consent required for the live broadcast of a performance¹⁴; and
- 51 (3) a right for authors¹⁵ of sound recordings¹⁶ and performers to share in a single equitable remuneration in respect of the wireless broadcasting of sound recordings¹⁷,

the following provisions apply¹⁸.

Where the place from which the programme-carrying signals are transmitted to the satellite ('the uplink station') is located in an EEA state, that place is treated as the place from which the broadcast is made and the person operating the uplink station is treated as the person making the broadcast¹⁹.

Where the uplink station is not located in an EEA state but a person who is established in an EEA state has commissioned the making of the broadcast, that person is treated as the person making the broadcast and the place in which he has his principal establishment in the European Economic Area is treated as the place from which the broadcast is made²⁰.

1 The date on which the Copyright and Related Rights Regulations 1996, SI 1996/2967, came into force: see regs 1(2), 28.

2 For the meaning of 'broadcast' see PARA 89 ante.

3 The place from which a wireless broadcast is made is the place where, under the control and responsibility of the person making the broadcast, the programme-carrying signals are introduced into an uninterrupted chain of communication (including, in the case of a satellite transmission, the chain leading to the satellite and down towards the earth): Copyright, Designs and Patents Act 1988 s 6(4) (substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 5; and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 4(c)). The Copyright, Designs and Patents Act 1988 s 6(4) (as substituted and amended) has effect subject to s 6A (as added and amended) (see the text and notes 12-20 infra): s 6(4A) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 6(1)). For the meaning of 'wireless broadcast' see PARA 88 note 8 ante.

4 For the meaning of 'country' see PARA 59 note 4 ante.

5 For these purposes, 'EEA state' means a member state, Iceland, Liechtenstein or Norway: Copyright, Designs and Patents Act 1988 s 172A(1) (s 172A added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 11(1); and the Copyright, Designs and Patents Act 1988 s 172A(1) substituted by the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 2(2), Sch 2 para 8(1), (2)). For the meaning of 'member state' see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.

- 6 For the meaning of 'literary work' see PARA 67 ante.
- 7 For the meaning of 'dramatic work' see PARA 73 ante.
- 8 For the meaning of 'musical work' see PARA 73 ante.
- 9 For the meaning of 'artistic work' see PARA 75 ante.
- 10 For the meaning of 'film' see PARA 86 ante.
- 11 In the Copyright, Designs and Patents Act 1988 s 20 (as amended): see PARA 326 post.
- 12 Ibid s 6A(1)(a) (s 6A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 6(2); and the Copyright, Designs and Patents Act 1988 s 6A(1)(a) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 5(3)(a)).
- 13 In the Copyright, Designs and Patents Act 1988 s 182(1)(b) (as substituted and amended): see PARA 610 post.
- 14 Ibid s 6A(1)(b) (s 6A(1)(b), (c) as added (see note 12 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 5(3)(b)).
- 15 For the meaning of 'author' see PARA 110 post.
- 16 For the meaning of 'sound recording' see PARA 84 ante.
- 17 Copyright, Designs and Patents Act 1988 s 6A(1)(c) (as added and amended: see note 14 supra). As to the right to equitable remuneration see PARA 171 post.
- 18 Ibid s 6A(1) (as added: see note 12 supra).
- 19 Ibid s 6A(2) (as added: see note 12 supra).
- 20 Ibid s 6A(3) (as added: see note 12 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/E. PUBLISHED EDITIONS/91. Published editions.

E. PUBLISHED EDITIONS

91. Published editions.

Copyright¹ subsists in the typographical arrangement of published editions² made on or after 1 August 1989³, the author⁴ of which was at the material time⁵ a qualifying person⁶, or if it satisfies the qualification requirements as regards the country⁷ of first publication⁸.

Copyright subsists in a published edition made before 1 August 1989 only if it subsisted immediately before that date⁹. A published edition may, however, subsequently qualify for copyright protection after that date by virtue of first publication as specified above or by virtue of an Order in Council¹⁰ extending the provisions of the Copyright, Designs and Patents Act 1988¹¹.

Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that, it reproduces the typographical arrangement of a previous edition¹².

1 For the meaning of 'copyright' see PARA 57 ante.

2 See the Copyright, Designs and Patents Act 1988 s 1(1)(c); and PARA 57 ante. For the meaning of 'published edition' see PARA 92 post.

3 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

4 For the meaning of 'author' see PARA 110 post.

5 As to the material time see the Copyright, Designs and Patents Act 1988 s 154(5)(d); and PARA 60 note 3 ante. If the making of a work extended over a period, it is taken to have been made when its making was completed: s 170, Sch 1 para 1(3).

6 See *ibid* ss 153(1)(a), 154(1); and PARAS 59-60 ante.

7 For the meaning of 'country' see PARA 59 note 4 ante.

8 See the Copyright, Designs and Patents Act 1988 ss 153(1)(b), 155(1); and PARAS 59, 61 ante.

9 *Ibid* s 170, Sch 1 para 5(1). As to subsistence under the Copyright Act 1956 (repealed) see PARA 46 ante.

10 Ie by virtue of an order made under the Copyright, Designs and Patents Act 1988 s 159: see PARA 447 post.

11 *Ibid* Sch 1 para 5(2).

12 *Ibid* s 8(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(1) SCOPE OF COPYRIGHT/ (iv) Particular Works/E. PUBLISHED EDITIONS/92. Meaning of 'published edition'.

92. Meaning of 'published edition'.

'Published edition', in the context of copyright¹ in the typographical arrangement of a published² edition³, means a published edition of the whole or any part of one or more literary⁴, dramatic⁵ or musical⁶ works⁷.

The copyright in the typographical arrangement of a published edition should be distinguished from that in the design of a typeface which may be protected as an artistic work⁸.

1 See PARA 91 ante. For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'published' see PARA 63 ante.

3 The edition is the product, generally between covers, which the publisher offers to the public. Thus, in the case of a newspaper, the whole newspaper constitutes the edition: *Newspaper Licensing Agency Ltd v Marks & Spencer plc* [2001] UKHL 38, [2003] 1 AC 551, [2001] 3 All ER 977.

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'dramatic work' see PARA 73 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 Copyright, Designs and Patents Act 1988 s 8(1).

8 As to the copyright in artistic works see PARA 74 ante. For the meaning of 'artistic work' see PARA 75 ante. See also *ibid* ss 54, 55; and PARAS 381-382 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(i) In general/93. In general.

(2) DURATION OF COPYRIGHT

(i) In general

93. In general.

The Copyright, Designs and Patents Act 1988 made provision for the duration of copyright, both in respect of works made before 1 August 1989¹ and works made on or after that date².

Member states of the European Union were subsequently required³ to harmonise their laws relating to the duration of copyright and to provide for an extended term of copyright in certain works, provided that such works were protected in at least one member state on 1 July 1995⁴. Copyright in some works was in consequence revived.

Pursuant to this requirement and in order also to implement certain obligations arising under the EEA Agreement⁵, the Duration of Copyright and Rights in Performances Regulations 1995⁶ were made; they amend certain provisions of the Copyright, Designs and Patents Act 1988 relating to the duration of copyright with effect from 1 January 1996⁷, subject to certain savings and transitional provisions⁸. The provisions of the Regulations apply to:

- 52 (1) copyright works made⁹ on or after 1 January 1996¹⁰;
- 53 (2) works made before 1 January 1996 which first qualify for copyright protection on or after that date¹¹;
- 54 (3) works made before 1 January 1996, subject to the general saving¹² for any longer period applicable¹³ under the Copyright, Designs and Patents Act 1988¹⁴;
- 55 (4) works made before 1 January 1996 in which copyright expired before 31 December 1995 but which were on 1 July 1995 protected in another EEA state¹⁵ under legislation relating to copyright or related rights¹⁶.

The Duration of Copyright and Rights in Performances Regulations 1995 thus bring into existence 'extended copyrights'¹⁷ and 'revived copyrights'¹⁸.

For works made before 1 January 1996 it is necessary to know the duration of copyright under the Copyright, Designs and Patents Act 1988, as they may enjoy a longer period of copyright protection¹⁹. To ascertain the duration of copyright under the Copyright, Designs and Patents Act 1988 for works made before 1 August 1989, reference must be made to the transitional provisions of that Act²⁰, which in some cases refer back to the period of copyright protection conferred by the Copyright Act 1956²¹.

The Duration of Copyright and Rights in Performances Regulations 1995 also make provision as to the ownership of extended and revived copyrights²², licences and assignments of extended copyrights²³, and the exploitation of revived copyrights²⁴.

In relation to a film²⁵ in which copyright did not subsist or did not subsist as such²⁶ but which is or was protected as an original dramatic work²⁷ or as a collection of photographs²⁸ forming part of the film, references in the amended provisions of the Copyright, Designs and Patents Act 1988²⁹ and in the transitional provisions of the Duration of Copyright and Rights in Performances Regulations 1995 to copyright in a film are references to any copyright in the film as an original dramatic work or, as the case may be, in photographs forming part of the film³⁰.

- 1 See the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 12 (as amended); and PARA 108 post.
- 2 See *ibid* ss 12-15 (as originally enacted); and PARAS 101-106 post.
- 3 *Ie* by EC Council Directive 93/98 (OJ L290, 24.11.93, p 9).
- 4 See *ibid* arts 10.2, 13.1.
- 5 *Ie* the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183).
- 6 *Ie* the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended), which came into force on 1 January 1996 (see reg 1(2)).
- 7 See *ibid* reg 1(2).
- 8 *Ibid* reg 4.
- 9 A work the making of which extended over a period is to be taken to have been made when its making was completed: *ibid* reg 14(2).
- 10 *Ibid* reg 16(a).
- 11 *Ibid* reg 16(b). As to works later qualifying for copyright protection see PARA 56 ante.
- 12 *Ie* subject to the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 15 (see PARAS 101, 107 post). Any question arising, in relation to photographs taken before 1 August 1989, as to who is to be regarded as the author for the purposes of reg 16, is to be determined in accordance with the Copyright, Designs and Patents Act 1988 s 9 (see PARA 110 post) as in force on 1 January 1996 and not, by virtue of Sch 1 para 10 (see PARA 16 ante), in accordance with the law in force at the time when the work was made: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 19.
- 13 *Ie* under the provisions of the Copyright, Designs and Patents Act 1988 as they stood immediately before 1 January 1996, including the provisions of Sch 1 continuing the effect of earlier enactments.
- 14 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 16(c).
- 15 For these purposes, 'EEA state' means a member state, Iceland, Liechtenstein or Norway: *ibid* reg 2 (definition substituted by SI 2006/1028).
- 16 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 16(d). Under German copyright law the period of protection for some works of German authors was 50 years from the end of the calendar year in which the author died. The effect of Case C-92/92 *Phil Collins v Imtrat Handels GmbH* [1993] ECR I-5145, [1994] FSR 166, ECJ, is that this period of protection is likely to be available to works where the author was a national of an EEA state. Consequently, inquiries should be made in relation to works in which United Kingdom copyright expired about 20 years before 31 December 1995 as to the nationality of the author and the country of origin of the work to ascertain whether copyright has been revived in the work by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended). See note 18 *infra*. For the meaning of 'country of origin' see PARA 94 post. The term of copyright protection granted by the legislation of a member state to the works of an author who is a national of another member state may not be shorter than the term granted to the works of its own nationals: Case C-360/00 *Land Hessen v G Ricordi & Co Buhnen- und Musikverlag GmbH* [2002] ECR I-5089, [2004] 2 CMLR 451, ECJ.
- 17 'Extended copyright' means any copyright which subsists, by virtue of the provisions of the Copyright, Designs and Patents Act 1988 as amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended), after the date on which it would have expired under the provisions of the Copyright, Designs and Patents Act 1988 as they stood immediately before 1 January 1996, including the provisions of Sch 1 continuing the effect of earlier enactments: Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 17.
- 18 'Revived copyright' means any copyright which subsists, by virtue of the provisions of the Copyright, Designs and Patents Act 1988 as amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended), after having expired under the provisions of the Copyright, Designs and Patents Act 1988 as they stood immediately before 1 January 1996, including the provisions of Sch 1 continuing the effect of earlier enactments, or any earlier enactment relating to copyright: Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 17.

19 See the Copyright, Designs and Patents Act 1988 ss 12-15 (as originally enacted); and PARAS 101-106 post.

20 See note 1 supra.

21 As to duration of copyright under the Copyright Act 1956 (repealed) see PARA 47 et seq ante.

22 See the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 18 (extended copyright: see PARA 140 post) and reg 20 (revived copyright: see PARA 141 post).

23 See ibid reg 21; and PARA 159 post.

24 See ibid regs 23-25; and PARAS 159, 297, 313 post.

25 For the meaning of 'film' see PARA 86 ante; definition applied by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 12(3).

26 As to such films see PARA 85 ante.

27 For the meaning of 'dramatic work' see PARA 73 ante; definition applied by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 12(3).

28 For the meaning of 'photograph' see PARA 77 ante; definition applied by ibid reg 12(3).

29 le as amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended).

30 Ibid reg 13.

UPDATE

93 In general

NOTE 3--Directive 93/98 repealed and replaced: European Parliament and EC Council Directive 2006/116 (OJ L372, 27.12.2006, p 12).

NOTE 4--See now arts 10(2), 11.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(ii) Works made on or after 1 January 1996/94. Meaning of 'country of origin'.

(ii) Works made on or after 1 January 1996

94. Meaning of 'country of origin'.

For the purposes of the provisions relating to the duration of copyright¹, the country of origin of a work is to be determined as follows².

If the work is first published³ in a Berne Convention country⁴ and is not simultaneously published⁵ elsewhere, the country of origin is that country⁶.

If the work is first published simultaneously in two or more countries only one of which is a Berne Convention country, the country of origin is that country⁷.

If the work is first published simultaneously in two or more countries of which two or more are Berne Convention countries, then:

- 56 (1) if any of those countries is an EEA state⁸, the country of origin is that country⁹; and
- 57 (2) if none of those countries is an EEA state, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection¹⁰.

If the work is unpublished or is first published in a country which is not a Berne Convention country, and is not simultaneously published in a Berne Convention country, the country of origin is:

- 58 (a) if the work is a film¹¹ and the maker of the film has his headquarters in, or is domiciled¹² or resident¹³ in a Berne Convention country, that country¹⁴;
- 59 (b) if the work is a work of architecture¹⁵ constructed in a Berne Convention country¹⁶ or an artistic work¹⁷ incorporated in a building¹⁸ or other structure situated in a Berne Convention country¹⁹, that country²⁰;
- 60 (c) in any other case, the country of which the author of the work is a national²¹.

1 I.e. the Copyright, Designs and Patents Act 1988 ss 12-15A (as amended). See, in particular, s 12 (as substituted) (see PARA 96 post) and s 13B (as added) (see PARA 98 post). For the meaning of 'copyright' see PARA 57 ante.

2 Ibid s 15A(1) (s 15A added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 8(1)).

3 For the meaning of 'publication' see PARA 63 ante.

4 For these purposes, a 'Berne Convention country' means a country which is a party to any Act of the International Convention for the Protection of Literary and Artistic Works (Berne, 9 September 1886; 77 BFSP 22; C 5167): Copyright, Designs and Patents Act 1988 s 15A(6)(a) (as added: see note 2 supra). As to the Berne Convention see PARA 452 post.

5 For these purposes, references to simultaneous publication are references to publication within 30 days of first publication: Copyright, Designs and Patents Act 1988 s 15A(6)(b) (as added: see note 2 supra).

6 Ibid s 15A(2) (as added: see note 2 supra).

- 7 Ibid s 15A(3) (as added: see note 2 supra).
- 8 For the meaning of 'EEA state' see PARA 90 note 5 ante. See also PARA 95 post.
- 9 Copyright, Designs and Patents Act 1988 s 15A(4)(a) (as added: see note 2 supra).
- 10 Ibid s 15A(4)(b) (as added: see note 2 supra).
- 11 For the meaning of 'film' see PARA 86 ante.
- 12 As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq.
- 13 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.
- 14 Copyright, Designs and Patents Act 1988 s 15A(5)(a) (as added: see note 2 supra).
- 15 For the meaning of 'work of architecture' see PARA 79 ante.
- 16 Copyright, Designs and Patents Act 1988 s 15A(5)(b)(i) (as added: see note 2 supra).
- 17 For the meaning of 'artistic work' see PARA 75 ante.
- 18 For the meaning of 'building' see PARA 79 ante.
- 19 Copyright, Designs and Patents Act 1988 s 15A(5)(b)(ii) (as added: see note 2 supra).
- 20 Ibid s 15A(5)(b) (as added: see note 2 supra).
- 21 Ibid s 15A(5)(c) (as added: see note 2 supra). For the meaning of 'author' see PARA 110 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(ii) Works made on or after 1 January 1996/95. Construction of references to EEA states.

95. Construction of references to EEA states.

For the purpose of the provisions¹ relating to the term of copyright protection applicable to a work of which the country of origin² is not an EEA state³ and of which the author⁴ is not a national⁵ of an EEA state:

- 61 (1) a work first published⁶ before 1 July 1995 is to be treated as published in an EEA state if it was on that date regarded under the law of the United Kingdom⁷ or another EEA state⁸ as having been published in that state⁹;
- 62 (2) an unpublished film¹⁰ made before 1 July 1995 is to be treated as originating in an EEA state if it was on that date regarded under the law of the United Kingdom or another EEA state as a film whose maker had his headquarters in, or was domiciled¹¹ or resident¹² in, that state¹³; and
- 63 (3) the author of a work made before 1 July 1995 is to be treated as an EEA national if he was on that date regarded under the law of the United Kingdom or another EEA state as a national of that state¹⁴.

1 In the Copyright, Designs and Patents Act 1988 ss 12-15A (as amended). See, in particular, s 12 (as substituted) (see PARA 96 post) and s 13B (as added) (see PARA 98 post).

2 For the meaning of 'country of origin' see PARA 94 ante.

3 For the meaning of 'EEA state' see PARA 93 note 15 ante.

4 For the meaning of 'author' see PARA 110 post.

5 References to a person being a national of an EEA state are to be construed, in relation to a body corporate, as references to its being incorporated under the law of an EEA state: Copyright, Designs and Patents Act 1988 s 172A(2) (s 172A added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 11(1); and the Copyright, Designs and Patents Act 1988 s 172A(2) amended by the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 2(2), Sch 2 para 8(1), (3)).

6 For the meaning of 'published' see PARA 63 ante; definition applied by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 12(3).

7 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

8 References to the law of another EEA state are references to the law of that state having effect for the purposes of rights corresponding to those provided for in the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended): Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 36(1). 'Another EEA state' means an EEA state other than the United Kingdom: reg 36(3).

9 Ibid reg 36(1)(a).

10 For the meaning of 'film' see PARA 86 ante; definition applied by ibid reg 12(3).

11 As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq.

12 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

13 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 36(1)(b).

14 Ibid reg 36(1)(c).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(ii) Works made on or after 1 January 1996/96. Literary, dramatic, musical or artistic works.

96. Literary, dramatic, musical or artistic works.

The following provisions have effect with respect to the duration of copyright¹ in a literary², dramatic³, musical⁴ or artistic⁵ work⁶.

Copyright expires at the end of the period of 70 years from the end of the calendar year in which the author⁷ dies, subject as follows⁸.

If the work is of unknown authorship⁹, copyright expires:

- 64 (1) at the end of the period of 70 years from the end of the calendar year in which the work was made¹⁰; or
- 65 (2) if during that period the work is made available to the public¹¹, at the end of the period of 70 years from the end of the calendar year in which it is first so made available¹²,

subject as follows¹³.

Where the country of origin¹⁴ of the work is not an EEA state¹⁵ and the author of the work is not a national of an EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply¹⁶ under the above provisions¹⁷.

If the work is computer-generated¹⁸, the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made¹⁹.

The above provisions do not apply to Crown copyright²⁰, Parliamentary copyright²¹, or a work copyright in which is vested²² in an international organisation²³.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 Copyright, Designs and Patents Act 1988 s 12(1) (s 12 substituted by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 5(1)). As to copyright in such works see PARA 66 et seq ante.

7 For the meaning of 'author' see PARA 110 post.

8 Copyright, Designs and Patents Act 1988 s 12(2) (as substituted: see note 6 supra). The Copyright, Designs and Patents Act 1988 s 12(2) (as substituted) applies if the identity of the author becomes known before the end of the period specified in s 12(3)(a) or (b) (as substituted) (see heads (1), (2) in the text): s 12(4) (as so substituted).

In relation to a work of joint authorship, the reference in the Copyright, Designs and Patents Act 1988 s 12(2) (as substituted) to the death of the author is to be construed:

6 (1) if the identity of all the authors is known, as a reference to the death of the last of them to die (s 12(8)(a)(i) (as so substituted)); and

7 (2) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known (s 12(8)(a)(ii) (as so substituted)),

and the reference in s 12(4) (as substituted) to the identity of the author becoming known is to be construed as a reference to the identity of any of the authors becoming known (s 12(8)(b) (as so substituted)). For the meaning of 'work of joint authorship' see PARA 113 post.

9 For the meaning of 'unknown authorship' see PARA 114 post.

10 Copyright, Designs and Patents Act 1988 s 12(3)(a) (as substituted: see note 6 supra). See also s 12(4), (8) (as substituted); and note 8 supra.

11 For the purposes of *ibid* s 12(3) (as substituted), making available to the public includes:

8 (1) in the case of a literary, dramatic or musical work:

1. (a) performance in public (s 12(5)(a)(i) (as substituted: see note 6 supra)); or
1

2. (b) communication to the public (s 12(5)(a)(ii) (as so substituted; and s 12(5)(a)(ii) further substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 4(1));
2

9 (2) in the case of an artistic work:

3. (a) exhibition in public (Copyright, Designs and Patents Act 1988 s 12(5)(b)(i) (as so substituted));
3

4. (b) a film including the work being shown in public (s 12(5)(b)(ii) (as so substituted)); or
4

5. (c) communication to the public (s 12(5)(b)(iii) (as so substituted; and s 12(5)(b)(iii) further substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 4(2)),
5

but in determining generally for the purposes of the Copyright, Designs and Patents Act 1988 s 12(3) (as substituted) whether a work has been made available to the public no account is to be taken of any unauthorised act (s 12(5) (as so substituted)).

For the meaning of 'performance' see PARA 324 post; for the meaning of 'communication to the public' see PARA 326 post; for the meaning of 'film' see PARA 86 ante; and for the meaning of 'unauthorised' see PARA 63 note 30 ante.

12 *Ibid* s 12(3)(b) (as substituted: see note 6 supra). See also s 12(4), (8) (as substituted); and note 8 supra.

13 *Ibid* s 12(3) (as substituted: see note 6 supra).

14 For the meaning of 'country of origin' see PARA 94 ante.

15 For the meaning of 'EEA state' see PARA 90 note 5 ante. See also PARA 95 ante.

16 *Ie* under the Copyright, Designs and Patents Act 1988 s 12(2)-(5) (as substituted): see the text to notes 7-13 supra.

17 *Ibid* s 12(6) (as substituted: see note 6 supra). In relation to a work of joint authorship, the reference in the Copyright, Designs and Patents Act 1988 s 12(6) (as substituted) to the author not being a national of an EEA state is to be construed as a reference to none of the authors being a national of an EEA state: s 12(8)(c) (as so substituted).

18 'Computer-generated', in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work: *ibid* s 178.

19 *Ibid* s 12(7) (as substituted: see note 6 supra).

20 For the meaning of 'Crown copyright' see PARA 144 post.

21 For the meaning of 'Parliamentary copyright' see PARA 150 post.

22 le by virtue of the Copyright, Designs and Patents Act 1988 s 168: see PARA 155 post.

23 Ibid s 12(9) (as substituted: see note 6 supra). For the meaning of 'international organisation' see PARA 155 note 8 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(ii) Works made on or after 1 January 1996/97. Sound recordings.

97. Sound recordings.

The following provisions have effect with respect to the duration of copyright¹ in a sound recording².

Copyright expires³:

- 66 (1) at the end of the period of 50 years from the end of the calendar year in which the recording is made⁴; or
- 67 (2) if during that period the recording is published⁵, 50 years from the end of the calendar year in which it is first published⁶; or
- 68 (3) if during that period the recording is not published but is made available to the public by being played in public or communicated to the public⁷, 50 years from the end of the calendar year in which it is first so made available⁸,

but in determining whether a sound recording has been published, played in public or communicated to the public, no account is to be taken of any unauthorised act⁹.

Where the author¹⁰ of a sound recording is not a national of an EEA state¹¹, the duration of copyright is that to which the sound recording is entitled in the country¹² of which the author is a national, provided that does not exceed the period which would apply under heads (1) to (3) above¹³. However, if or to the extent that the application of this provision¹⁴ would be at variance with an international obligation to which the United Kingdom¹⁵ became subject prior to 29 October 1993¹⁶, the duration of copyright is as specified in heads (1) to (3) above¹⁷.

1 For the meaning of 'copyright' see PARA 57 ante.

2 Copyright, Designs and Patents Act 1988 s 13A(1) (s 13A added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 6(1)). For the meaning of 'sound recording' see PARA 84 ante. As to copyright in sound recordings see PARA 83 ante.

3 Copyright in a sound recording existing on 31 October 2003 continues to subsist until the date it would have expired under the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 15 (see PARA 101 post) if that date is later than the date on which copyright would expire under the provisions of the Copyright, Designs and Patents Act 1988 s 13A (as added) as amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 29 (see the text and notes 4-17 infra): regs 1, 39.

4 Copyright, Designs and Patents Act 1988 s 13A(2)(a) (s 13A as added (see note 2 supra); and s 13A(2) substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 29(a)).

5 For the meaning of 'publication' see PARA 63 ante.

6 Copyright, Designs and Patents Act 1988 s 13A(2)(b) (as added and substituted: see notes 2, 4 supra).

7 For the meaning of 'communication to the public' see PARA 326 post.

8 Copyright, Designs and Patents Act 1988 s 13A(2)(c) (as added and substituted: see notes 2, 4 supra).

9 Ibid s 13A(2) (as added and substituted: see notes 2, 4 supra). For the meaning of 'unauthorised' see PARA 63 note 30 ante.

10 For the meaning of 'author' see PARA 110 post.

11 For the meaning of 'EEA state' see PARA 90 note 5 ante. See also PARA 95 ante.

12 For the meaning of 'country' see PARA 59 note 4 ante.

13 Copyright, Designs and Patents Act 1988 s 13A(4) (as added (see note 2 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 29(c)).

14 In the Copyright, Designs and Patents Act 1988 s 13A(4) (as added and amended): see the text and notes 10-13 supra.

15 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

16 Prior to 29 October 1993 the United Kingdom was a signatory to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 26 October 1961; TS 38 (1964); Cmnd 2425), which provides for a minimum term of protection for phonograms (ie any exclusively aural fixation of sounds of a performance or other sounds) of 20 years from the end of the calendar year when the phonogram was made (or fixated): see art 14.

17 Copyright, Designs and Patents Act 1988 s 13A(5) (as added (see note 2 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 29(c)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(ii) Works made on or after 1 January 1996/98. Films.

98. Films.

The following provisions have effect with respect to the duration of copyright¹ in a film².

Copyright expires at the end of the period of 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons³:

- 69 (1) the principal director⁴;
- 70 (2) the author⁵ of the screenplay⁶;
- 71 (3) the author of the dialogue⁷; or
- 72 (4) the composer of music specially created for and used in the film⁸,

subject as follows⁹.

If the identity of the persons referred to in heads (1) to (4) above is unknown¹⁰, copyright expires at:

- 73 (a) the end of the period of 70 years from the end of the calendar year in which the film was made¹¹; or
- 74 (b) if during that period the film is made available to the public¹², at the end of the period of 70 years from the end of the calendar year in which it is first so made available¹³.

Where the country of origin¹⁴ is not an EEA state¹⁵ and the author of the film is not a national of an EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply¹⁶ under the above provisions¹⁷.

If in any case there is no person falling within heads (1) to (4) above, the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the film was made¹⁸.

1 For the meaning of 'copyright' see PARA 57 ante.

2 Copyright, Designs and Patents Act 1988 s 13B(1) (s 13B added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 6(1)). For the meaning of 'film' see PARA 86 ante. As to copyright in films see PARA 85 ante.

3 If the identity of one or more of the persons referred to in the Copyright, Designs and Patents Act 1988 s 13B(2)(a)-(d) (as added) (see heads (1)-(4) in the text) is known and the identity of one or more others is not, the reference to the death of the last of them to die is to be construed as a reference to the death of the last whose identity is known: s 13B(3) (as added: see note 2 supra). The provisions of s 13B(2), (3) (as added) apply if the identity of any of those persons becomes known before the end of the period specified in s 13B(4)(a) or (b) (as added) (see heads (a), (b) in the text): s 13B(5) (as so added).

4 Ibid s 13B(2)(a) (as added: see note 2 supra). See also note 3 supra.

5 For the meaning of 'author' see PARA 110 post.

6 Copyright, Designs and Patents Act 1988 s 13B(2)(b) (as added: see note 2 supra). See also note 3 supra.

7 Ibid s 13B(2)(c) (as added: see note 2 supra). See also note 3 supra.

8 Ibid s 13B(2)(d) (as added: see note 2 supra). See also note 3 supra.

9 Ibid s 13B(2) (as added: see note 2 supra).

10 For these purposes, the identity of any of the persons referred to in the Copyright, Designs and Patents Act 1988 s 13B(2)(a)-(d) (as added) is to be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but, if the identity of any such person is once known, it may not subsequently be regarded as unknown: s 13B(10) (as added: see note 2 supra).

11 Ibid s 13B(4)(a) (as added: see note 2 supra). See also note 3 supra.

12 For these purposes, making available to the public includes showing in public or communicating to the public; but, in determining generally whether a film has been made available to the public, no account is to be taken of any unauthorised act: *ibid* s 13B(6) (as added (see note 2 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 4(3)). For the meaning of 'communication to the public' see *PARA 326 post*; and for the meaning of 'unauthorised' see *PARA 63 note 30 ante*.

13 Copyright, Designs and Patents Act 1988 s 13B(4)(b) (as added: see note 2 supra). See also note 3 supra.

14 For the meaning of 'country of origin' see *PARA 94 ante*.

15 For the meaning of 'EEA state' see *PARA 90 note 5 ante*. See also *PARA 95 ante*.

16 *Ie* under the Copyright, Designs and Patents Act 1988 s 13B(2)-(6) (as added and amended): see the text to notes 3-13 supra.

17 *Ibid* s 13B(7) (as added: see note 2 supra). In relation to a film of which there are joint authors, the reference in the Copyright, Designs and Patents Act 1988 s 13B(7) (as added) to the author not being a national of an EEA state is to be construed as a reference to none of the authors being a national of an EEA state: s 13B(8) (as so added).

18 *Ibid* s 13B(9) (as added: see note 2 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(ii) Works made on or after 1 January 1996/99. Broadcasts.

99. Broadcasts.

The following provisions have effect with respect to the duration of copyright¹ in a broadcast².

Copyright in a broadcast expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made, subject as follows³.

Where the author⁴ of the broadcast is not a national of an EEA state⁵, the duration of copyright in the broadcast is that to which it is entitled in the country⁶ of which the author is a national, provided that does not exceed the period which would apply⁷ under the above provisions⁸. If, or to the extent that, the application of this provision⁹ would be at variance with an international obligation to which the United Kingdom¹⁰ became subject prior to 29 October 1993¹¹, the duration of copyright is as specified¹² under the above provisions¹³.

Copyright in a repeat broadcast¹⁴ expires at the same time as the copyright in the original broadcast; and accordingly no copyright arises in respect of a repeat broadcast which is broadcast after the expiry of the copyright in the original broadcast¹⁵.

1 For the meaning of 'copyright' see PARA 57 ante.

2 Copyright, Designs and Patents Act 1988 s 14(1) (s 14 substituted by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 7(1); and the Copyright, Designs and Patents Act 1988 s 14(1)-(3), (5)-(6) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). For the meaning of 'broadcast' see PARA 89 ante.

3 Copyright, Designs and Patents Act 1988 s 14(2) (as substituted and amended: see note 2 supra).

4 For the meaning of 'author' see PARA 110 post.

5 For the meaning of 'EEA state' see PARA 90 note 5 ante. See also PARA 95 ante.

6 For the meaning of 'country' see PARA 59 note 4 ante.

7 Ie under the Copyright, Designs and Patents Act 1988 s 14(2) (as substituted and amended): see the text to note 3 supra.

8 Ibid s 14(3) (as substituted and amended: see note 2 supra).

9 Ie ibid s 14(3) (as substituted and amended): see the text to notes 4-8 supra.

10 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

11 Prior to 29 October 1993 the United Kingdom was a signatory to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 26 October 1961; TS 38 (1964); Cmnd 2425), which provides for a minimum term of protection for broadcasts (ie the transmission by wireless means for public reception of sounds or of images and sounds) of 20 years from the end of the calendar year when the broadcast took place: see art 14.

12 Ie as specified in the Copyright, Designs and Patents Act 1988 s 14(2) (as substituted and amended): see the text to note 3 supra.

13 Ibid s 14(4) (as substituted: see note 2 supra).

14 For these purposes, a repeat broadcast means one which is a repeat of a broadcast previously made: ibid s 14(6) (as substituted and amended: see note 2 supra).

15 Ibid s 14(5) (as substituted and amended: see note 2 supra). No copyright subsists in a wireless broadcast made before 1 June 1957, or a broadcast by cable made before 1 January 1985; and any such broadcast must be disregarded for the purposes of s 14(5) (as substituted and amended): Sch 1 para 9 (substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 16(a)). For the meaning of 'wireless broadcast' see PARA 88 note 8 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(ii) Works made on or after 1 January 1996/100. Typographical arrangement of published editions.

100. Typographical arrangement of published editions.

Copyright¹ in the typographical arrangement of a published edition² expires at the end of the period of 25 years from the end of the calendar year in which the edition was first published³.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'published edition' see PARA 92 ante.

3 Copyright, Designs and Patents Act 1988 s 15. For the meaning of 'publication' see PARA 63 ante. As to copyright in the typographical arrangement of a published edition see PARA 91 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(iii) Works made on or after 1 August 1989 and before 1 January 1996/101. In general.

(iii) Works made on or after 1 August 1989 and before 1 January 1996

101. In general.

Copyright¹ in a work made on or after 1 August 1989² and before 1 January 1996³ continues to subsist until the date on which it would have expired under the provisions of the Copyright, Designs and Patents Act 1988 as they stood immediately before 1 January 1996⁴ if that date is later than the date on which copyright would expire under the amended provisions⁵ of that Act⁶.

1 For the meaning of 'copyright' see PARA 57 ante.

2 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

3 Ie the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).

4 Ie the Copyright, Designs and Patents Act 1988 s 12-15 (as originally enacted): see PARAS 102-106 post.

5 Ie the provisions of the Copyright, Designs and Patents Act 1988 as amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended): see PARA 94 et seq ante.

6 Ibid reg 15(1). Where reg 15(1) has effect, the Copyright, Designs and Patents Act 1988 s 57 (anonymous or pseudonymous works: see PARA 384 post) applies as it applied immediately before 1 January 1996, ie without the amendments made by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 5(2): reg 15(2).

The term conferred by the Copyright, Designs and Patents Act 1988 (as originally enacted) may be longer where eg the country of origin is not an EEA state and the author is not an EEA national and the period conferred by the country of origin is short: see PARA 93 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(iii) Works made on or after 1 August 1989 and before 1 January 1996/102. Literary, dramatic, musical and artistic works.

102. Literary, dramatic, musical and artistic works.

Copyright¹ in a literary², dramatic³, musical⁴ or artistic⁵ work expires at the end of the period of 50 years from the end of the calendar year in which the author⁶ dies, subject to the following provisions⁷.

If the work is of unknown authorship⁸, copyright expires at the end of the period of 50 years from the end of the calendar year in which it is first made available⁹ to the public¹⁰.

If the work is computer-generated¹¹, copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made¹².

The above provisions do not apply to Crown copyright¹³, Parliamentary copyright¹⁴, or a work copyright in which is vested¹⁵ in an international organisation¹⁶.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 For the meaning of 'author' see PARA 110 post.

7 Copyright, Designs and Patents Act 1988 s 12(1) (as originally enacted). See also PARA 101 ante. In relation to a work of joint authorship, the reference in s 12(1) (as originally enacted) to the death of the author is to be construed: (1) if the identity of all the authors is known, as a reference to the death of the last of them to die; and (2) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last of the authors whose identity is known: s 12(4)(a) (as originally enacted). For the meaning of 'work of joint authorship' see PARA 113 post.

8 For the meaning of 'unknown authorship' see PARA 114 post.

9 For this purpose, making available to the public includes:

10 (1) in the case of a literary, dramatic or musical work, performance in public or being broadcast or included in a cable programme service;

11 (2) in the case of an artistic work, exhibition in public, a film including the work being shown in public or being included in a broadcast or cable programme service,

but, in determining generally whether a work has been made available to the public, no account is to be taken of any unauthorised act: Copyright, Designs and Patents Act 1988 s 12(2) (as originally enacted). For the meaning of 'performance' see PARA 324 post; for the meaning of 'broadcast' see PARA 89 ante; for the meaning of 'film' see PARA 86 ante; and for the meaning of 'unauthorised' see PARA 63 note 30 ante. For the meanings of 'cable programme service' and 'inclusion in a cable programme service' see PARA 105 post.

10 Ibid s 12(2) (as originally enacted). Section 12(1) (as originally enacted) (see the text to notes 1-7 supra) does not apply if the identity of the author becomes known after the end of that period: s 12(2) (as originally enacted). In relation to a work of joint authorship, the reference in s 12(2) (as originally enacted) to the identity of the author becoming known is to be construed as a reference to the identity of any of the authors becoming known: s 12(4)(b) (as originally enacted).

11 For the meaning of 'computer-generated' see PARA 96 note 18 ante.

12 Copyright, Designs and Patents Act 1988 s 12(3) (as originally enacted). Accordingly, neither s 12(1) (as originally enacted) (see the text to notes 1-7 supra) nor s 12(2) (as originally enacted) (see the text to notes 8-10 supra) applies: s 12(3) (as originally enacted).

13 For the meaning of 'Crown copyright' see PARA 144 post.

14 For the meaning of 'Parliamentary copyright' see PARA 150 post.

15 Ie by virtue of the Copyright, Designs and Patents Act 1988 s 168: see PARA 155 post.

16 Ibid s 12(5) (as originally enacted). For the meaning of 'international organisation' see PARA 155 note 8 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(iii) Works made on or after 1 August 1989 and before 1 January 1996/103. Sound recordings and films.

103. Sound recordings and films.

Copyright¹ in a sound recording² or film³ expires at the end of the period of 50 years from the end of the calendar year in which it is made or, if it is released⁴ before the end of that period, 50 years from the end of the calendar year in which it is released⁵.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'sound recording' see PARA 84 ante.

3 For the meaning of 'film' see PARA 86 ante.

4 For these purposes, a sound recording or film is released when it is first published, broadcast or included in a cable programme service or, in the case of a film or a film soundtrack, the film is first shown in public; but, in determining whether a work has been released, no account is to be taken of any unauthorised act: Copyright, Designs and Patents Act 1988 s 13(2) (as originally enacted). For the meaning of 'published' see PARA 63 ante; for the meaning of 'broadcast' see PARA 89 ante; and for the meaning of 'unauthorised' see PARA 63 note 30 ante. For the meanings of 'cable programme service' and 'inclusion in a cable programme service' see PARA 105 post.

5 Ibid s 13(1) (as originally enacted). See also PARA 101 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(iii) Works made on or after 1 August 1989 and before 1 January 1996/104. Broadcasts and cable programmes.

104. Broadcasts and cable programmes.

Copyright¹ in a broadcast² or cable programme³ expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service⁴.

Copyright in a repeat broadcast or cable programme⁵ expires at the same time as the copyright in the original broadcast or cable programme; and accordingly no copyright arises in respect of a repeat broadcast or cable programme which is broadcast or included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme⁶.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'broadcast' see PARA 89 ante.

3 For the meaning of 'cable programme' see PARA 105 post.

4 Copyright, Designs and Patents Act 1988 s 14(1) (as originally enacted). For the meanings of 'cable programme service' and 'inclusion in a cable programme service' see PARA 105 post. See also PARA 101 ante.

5 For these purposes, a repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service: *ibid* s 14(3) (as originally enacted).

6 *Ibid* s 14(2) (as originally enacted). No copyright subsists in a broadcast made before 1 June 1957 or a cable programme included in a cable programme service before 1 January 1985; and any such broadcast or cable programme is to be disregarded for the purposes of s 14(2) (as originally enacted): s 170, Sch 1 para 9 (as originally enacted).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(iii) Works made on or after 1 August 1989 and before 1 January 1996/105. Meanings of 'cable programme' and 'cable programme service'.

105. Meanings of 'cable programme' and 'cable programme service'.

'Cable programme' means any item included in a cable programme service¹.

'Cable programme service' means a service which consists wholly or mainly in sending visual images, sounds or other information by means of a telecommunications system², otherwise than by wireless telegraphy³, for reception:

- 75 (1) at two or more places, whether for simultaneous reception or at different times in response to requests by different users; or
- 76 (2) for presentation to members of the public,

and which is not, or so far as it is not, excepted by or under the following provisions⁴. The following are excepted from the meaning of 'cable programme service':

- 77 (a) a service or part of a service of which it is an essential feature that, while visual images, sounds or other information are being conveyed by the person providing the service, there will or may be sent from each place of reception, by means of the same system or, as the case may be, the same part of it, information, other than signals sent for the operation or control of the service, for reception by the person providing the service or other persons receiving it⁵;
- 78 (b) a service run for the purposes of a business⁶ where:
 - 1
 - 1. (i) no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system⁷;
 - 2. (ii) the visual images, sounds or other information are conveyed by the system solely for purposes internal to the running of the business and not by way of rendering a service or providing amenities for others⁸; and
 - 3. (iii) the system is not connected to any other telecommunications system⁹;
- 2
- 79 (c) a service run by a single individual where:
 - 3
 - 4. (i) all the apparatus comprised in the system is under his control¹⁰;
 - 5. (ii) the visual images, sounds or other information conveyed by the system are conveyed solely for domestic purposes of his¹¹; and
 - 6. (iii) the system is not connected to any other telecommunications system¹²;
- 4
- 80 (d) services where:
 - 5
 - 7. (i) all the apparatus comprised in the system is situated in, or connects, premises which are in single occupation¹³; and
 - 8. (ii) the system is not connected to any other telecommunications system¹⁴,
- 6
- 81 other than services operated as part of the amenities provided for residents or inmates of premises run as a business¹⁵;

- 82 (e) services which are, or to the extent that they are, run for persons providing broadcasting¹⁶ or cable programme services or providing programmes for such services¹⁷.

References to the inclusion of a cable programme or work in a cable programme service are references to its transmission as part of the service; and references to the person including it are references to the person providing the service¹⁸.

Copyright¹⁹ does not subsist in a cable programme if it is included in a cable programme service by reception and immediate retransmission of a broadcast²⁰, or if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast²¹.

1 Copyright, Designs and Patents Act 1988 s 7(1) (repealed).

2 For the meaning of 'telecommunications system' see PARA 89 note 2 ante.

3 For the meaning of 'wireless telegraphy' see PARA 88 note 8 ante.

4 Copyright, Designs and Patents Act 1988 s 7(1) (repealed).

5 Ibid s 7(2)(a) (repealed).

6 'Business' includes a trade or profession: ibid s 178.

7 Ibid s 7(2)(b)(i) (repealed).

8 Ibid s 7(2)(b)(ii) (repealed).

9 Ibid s 7(2)(b)(iii) (repealed).

10 Ibid s 7(2)(c)(i) (repealed).

11 Ibid s 7(2)(c)(ii) (repealed).

12 Ibid s 7(2)(c)(iii) (repealed).

13 Ibid s 7(2)(d)(i) (repealed).

14 Ibid s 7(2)(d)(ii) (repealed).

15 Ibid s 7(2)(d) (repealed).

16 For the meaning of 'broadcasting' see PARA 89 ante.

17 Copyright, Designs and Patents Act 1988 s 7(2)(e) (repealed).

18 Ibid s 7(5) (repealed).

19 For the meaning of 'copyright' see PARA 57 ante.

20 Copyright, Designs and Patents Act 1988 s 7(6)(a) (repealed). For the meaning of 'broadcast' see PARA 89 ante.

21 Ibid s 7(6)(b) (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(iii) Works made on or after 1 August 1989 and before 1 January 1996/106. Typographical arrangement of published editions.

106. Typographical arrangement of published editions.

Copyright¹ in the typographical arrangement of a published edition² expires at the end of the period of 25 years from the end of the calendar year in which the edition was first published³.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'published edition' see PARA 92 ante.

3 Copyright, Designs and Patents Act 1988 s 15. See also PARA 101 ante. For the meaning of 'published' see PARA 63 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(iv) Works made before 1 August 1989/107. In general.

(iv) Works made before 1 August 1989

107. In general.

Copyright in a work made before 1 August 1989¹ continues to subsist until the date on which it would have expired under the provisions of the Copyright, Designs and Patents Act 1988 as they stood immediately before 1 January 1996² if that date is later than the date on which copyright would expire under the amended provisions³ of that Act⁴.

In general the Copyright, Designs and Patents Act 1988 preserved the position in relation to duration which obtained under the Copyright Act 1956, except in the case of certain unpublished works⁵. Under the Copyright Act 1956 copyright in such unpublished works was perpetual but the Copyright, Designs and Patents Act 1988 provided that all such copyrights would expire on 31 December 2039⁶.

1 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

2 Ie including the provisions of *ibid* s 170, Sch 1 continuing the effect of earlier enactments. The date mentioned in the text is the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).

3 Ie the provisions of the Copyright, Designs and Patents Act 1988 as amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended): see PARA 94 et seq ante.

4 *Ibid* reg 15(1). See also PARA 101 note 6 ante. Any question arising, in relation to photographs taken before 1 August 1989, as to who is to be regarded as the author for the purposes of reg 15, is to be determined in accordance with the Copyright, Designs and Patents Act 1988 s 9 (see PARA 110 post) as in force on 1 January 1996 and not, by virtue of Sch 1 para 10 (see PARA 16 ante), in accordance with the law in force at the time when the work was made: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 19.

5 Ie unpublished literary, dramatic and musical works, unpublished engravings and unpublished photographs taken on or after 1 June 1957: see PARA 108 post.

6 See PARA 108 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(2) DURATION OF COPYRIGHT/(iv) Works made before 1 August 1989/108. Works made before 1 August 1989.

108. Works made before 1 August 1989.

The following provisions have effect with respect to the duration of copyright in works made before 1 August 1989¹; and the question which provision applies to a work is to be determined by reference to the facts immediately before that date².

Copyright in the following descriptions of work continues to subsist until the date on which it would have expired under the Copyright Act 1956³:

- 83 (1) literary⁴, dramatic⁵ or musical⁶ works⁷ which had been made available to the public⁸ after the death of the author but before 1 August 1989⁹;
- 84 (2) engravings¹⁰ published after the death of the author but before 1 August 1989¹¹;
- 85 (3) published¹² photographs¹³ and photographs taken before 1 June 1957¹⁴;
- 86 (4) published sound recordings¹⁵ and sound recordings made before 1 June 1957¹⁶;
- 87 (5) published films¹⁷ and films registered¹⁸ under former enactments relating to the registration of films¹⁹.

Copyright in anonymous or pseudonymous²⁰ literary, dramatic, musical or artistic²¹ works, other than photographs, continues to subsist:

- 88 (a) if the work is published, until the date on which it would have expired in accordance with the Copyright Act 1956²²; and
- 89 (b) if the work is unpublished as at 1 August 1989, until 31 December 2039²³, or, if before the latter date the work is first made available to the public²⁴, until the end of the period of 70 years²⁵ from the end of the calendar year in which the work was first made available to the public²⁶,

unless, in any case, the identity of the author becomes known before that date, in which case the copyright expires 70 years²⁷ from the end of the calendar year in which the author died²⁸.

Copyright in the following descriptions of work continues to subsist until 31 December 2039²⁹:

- 90 (i) literary, dramatic and musical works the author of which has died and which had not been made available to the public before 1 August 1989³⁰;
- 91 (ii) unpublished engravings the author of which has died³¹;
- 92 (iv) unpublished photographs taken on or after 1 June 1957³².

Copyright in unpublished sound recordings made on or after 1 June 1957³³ and films not falling within head (5) above³⁴ continues to subsist until 31 December 2039, unless the recording or film is published before that date, in which case copyright in it continues until the end of the period of 50 years from the end of the calendar year in which the recording or film is published³⁵.

Copyright in any other description of existing work³⁶ continues to subsist until the date on which copyright in that description of work expires in accordance with the provisions³⁷ of the Copyright, Designs and Patents Act 1988³⁸.

The above provisions do not apply to works subject to Crown³⁹ or Parliamentary⁴⁰ copyright⁴¹.

- 1 Copyright, Designs and Patents Act 1988 s 170, Sch 1 paras 1(3), 12(1). Where the making of a work extended over a period, it is taken to have been made when its making was completed: Sch 1 para 1(3). The date mentioned in the text is the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.
- 2 Ibid Sch 1 para 12(1). Expressions used in Sch 1 para 12 which were defined for the purposes of the Copyright Act 1956 (repealed) have the same meaning as in that Act: Copyright, Designs and Patents Act 1988 Sch 1 para 12(1). See also PARA 107 ante.
- 3 As to duration of copyright under the Copyright Act 1956 (repealed) in such works see PARA 47 et seq ante.
- 4 For the meaning of 'literary work' see PARA 37 note 2 ante.
- 5 For the meaning of 'dramatic work' see PARA 37 note 3 ante.
- 6 The expression 'musical work' was not defined in the Copyright Act 1956. For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 ante.
- 7 The works in relation to which the period of 50 years mentioned in the Copyright Act 1956 s 2(3) proviso (amended by the Cable and Broadcasting Act 1984 s 57, Sch 5 para 6(1), (2), Sch 6; repealed) had begun to run.
- 8 The work had been published or performed in public or records of the work had been offered for sale to the public or the work had been broadcast or included in a cable programme: see the Copyright Act 1956 s 2(3) proviso (as amended (see note 7 supra); repealed).
- 9 Copyright, Designs and Patents Act 1988 Sch 1 para 12(2)(a).
- 10 The engravings in relation to which the period of 50 years mentioned in the Copyright Act 1956 s 3(4) proviso (repealed) had begun to run. For the meaning of 'engraving' see PARA 37 note 6 ante.
- 11 Copyright, Designs and Patents Act 1988 Sch 1 para 12(2)(b).
- 12 For the meaning of 'published' see PARA 39 ante.
- 13 For the meaning of 'photograph' see PARA 37 note 6 ante.
- 14 Copyright, Designs and Patents Act 1988 Sch 1 para 12(2)(c).
- 15 For the meaning of 'sound recording' see PARA 37 note 7 ante.
- 16 Copyright, Designs and Patents Act 1988 Sch 1 para 12(2)(d).
- 17 For the meaning of 'film' see PARA 37 note 8 ante.
- 18 The films falling within the Copyright Act 1956 s 13(3)(a) (repealed): see PARA 43 ante.
- 19 Copyright, Designs and Patents Act 1988 Sch 1 para 12(2)(e). For the meaning of 'former enactments relating to the registration of films' see PARA 51 note 6 ante. In relation to films made before 1 June 1957 see PARAS 85, 93 ante.
- 20 For the meaning of 'anonymous or pseudonymous work' see PARA 37 note 27 ante.
- 21 For the meaning of 'artistic work' see PARA 37 note 6 ante.
- 22 Copyright, Designs and Patents Act 1988 Sch 1 para 12(3)(a).
- 23 The end of the period of 50 years from the end of the calendar year in which the Copyright, Designs and Patents Act 1988 came into force. See note 1 supra.
- 24 The within the meaning of ibid s 12(3) (as substituted): see PARA 96 note 11 ante.
- 25 The date on which copyright expires in accordance with ibid s 12(3) (as substituted): see PARA 96 ante.

26 Ibid Sch 1 para 12(3)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 18(3)(a)).

27 Ie the date on which copyright expires in accordance with the Copyright, Designs and Patents Act 1988 s 12(2) (as substituted): see PARA 96 ante.

28 Ibid Sch 1 para 12(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 18(3)(b), (c)).

29 See note 23 supra.

30 Copyright, Designs and Patents Act 1988 Sch 1 para 12(4)(a). The works referred to are those in relation to which none of the acts mentioned in the Copyright Act 1956 s 2(3) provisos (a)-(e) (repealed) applies.

31 Copyright, Designs and Patents Act 1988 Sch 1 para 12(4)(b).

32 Ibid Sch 1 para 12(4)(c).

33 Ibid Sch 1 para 12(5)(a).

34 Ibid Sch 1 para 12(5)(b).

35 Ibid Sch 1 para 12(5).

36 For the meaning of 'existing work' see PARA 56 ante.

37 Ie in accordance with the provisions of the Copyright, Designs and Patents Act 1988 ss 12-15 (as originally enacted): see PARA 101 et seq ante.

38 Ibid Sch 1 para 12(6).

39 For the meaning of 'Crown copyright' see PARA 144 post.

40 For the meaning of 'Parliamentary copyright' see PARA 150 post.

41 Copyright, Designs and Patents Act 1988 Sch 1 para 12(7).

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(3) AUTHORSHIP AND OWNERSHIP

(i) In general

109. Introduction.

The identity of the author of a work is important for a number of reasons. For example, subsistence of copyright may depend on the qualifying status of the author¹. Usually the author is the first owner of the copyright² or, if he is employed, his employer will be; and the duration of copyright³ is in many cases measured by reference to the author's life. An author is also entitled to certain moral rights in his work⁴.

For works made on or after 1 August 1989⁵ questions of authorship are determined in accordance with the relevant provisions of the Copyright, Designs and Patents Act 1988⁶; and for works made before that date questions of authorship are determined in accordance with the law in force at the time when the work was made⁷.

In addition, there are special provisions dealing with the ownership of extended⁸ and revived⁹ copyrights pursuant to the Duration of Copyright and Rights in Performances Regulations 1995¹⁰.

1 As to qualification by reference to the author see PARA 60 ante.

2 As to first ownership of copyright see PARA 118 post.

3 As to duration of copyright see PARA 93 et seq ante.

4 As to moral rights see PARA 455 et seq post.

5 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

6 Ie *ibid* ss 9-11 (as amended): see PARA 110 et seq post.

7 See *ibid* s 170, Sch 1 para 10 (authorship: see PARA 16 ante) and Sch 1 para 11 (ownership: see PARA 16 ante). A work of which the making extended over a period is to be taken to have been made when its making was completed: Sch 1 para 1(3). However, for the purposes of moral rights, the question of authorship is to be determined in accordance with the provisions of the Copyright, Designs and Patents Act 1988: Sch 1 para 10. As to photographs made before 1 August 1989 see PARAS 93, 108 ante, 141 post.

8 As to extended copyright see PARAS 93 ante, 140 post.

9 As to revived copyright see PARAS 93 ante, 141 post.

10 Ie the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended): see PARA 93 et seq ante.

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(ii) Authorship

A. WORKS MADE ON OR AFTER 1 AUGUST 1989

110. Authorship.

'Author', in relation to a work, means the person who creates it¹. That person is to be taken to be:

- 93 (1) in the case of a sound recording², the producer³;
- 94 (2) in the case of a film made before 1 July 1994⁴, the person by whom the arrangements necessary for the making of the film were undertaken⁵;
- 95 (3) in the case of a film made on or after 1 July 1994, the producer and the principal director⁶;
- 96 (4) in the case of a broadcast⁷, the person making the broadcast⁸ or, in the case of a broadcast which relays another broadcast by reception and immediate retransmission, the person making that other broadcast⁹;
- 97 (5) in the case of the typographical arrangement of a published edition¹⁰, the publisher¹¹.

In the case of a literary¹², dramatic¹³, musical¹⁴ or artistic¹⁵ work which is computer-generated¹⁶, the author is to be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken¹⁷.

1 Copyright, Designs and Patents Act 1988 s 9(1).

2 For the meaning of 'sound recording' see PARA 84 ante. As to the authorship of sound recordings see also PARA 112 post.

3 Copyright, Designs and Patents Act 1988 s 9(2)(aa) (s 9(2)(aa), (ab) added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(1)). 'Producer', in relation to a sound recording or film, means the person by whom the arrangements necessary for the making of the sound recording or film are undertaken: Copyright, Designs and Patents Act 1988 s 178 (definition added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(5)). For the meaning of 'film' see PARA 86 ante.

4 The amendments to the Copyright, Designs and Patents Act 1988 s 9 made by the Copyright and Related Rights Regulations 1996, SI 1996/2967 (as amended) apply in relation to films made on or after 1 July 1994: see reg 36(1).

5 Copyright, Designs and Patents Act 1988 s 9(2)(a) (as originally enacted). As to the authorship of films see also PARA 112 post.

6 Ibid s 9(2)(ab) (as added: see note 3 supra). A film is to be treated as a work of joint authorship (see PARA 113 post) unless the producer and the principal director are the same person: s 10(1A) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(2)).

7 For the meaning of 'broadcast' see PARA 89 ante.

8 As to the person making a broadcast see PARA 89 ante.

9 Copyright, Designs and Patents Act 1988 s 9(2)(b).

- 10 For the meaning of 'published edition' see PARA 92 ante.
- 11 Copyright, Designs and Patents Act 1988 s 9(2)(d).
- 12 For the meaning of 'literary work' see PARA 67 ante.
- 13 For the meaning of 'dramatic work' see PARA 73 ante.
- 14 For the meaning of 'musical work' see PARA 73 ante.
- 15 For the meaning of 'artistic work' see PARA 75 ante.
- 16 For the meaning of 'computer-generated' see PARA 96 note 18 ante.
- 17 Copyright, Designs and Patents Act 1988 s 9(3). As to authorship of literary, dramatic, musical and artistic works see also PARA 111 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(ii) Authorship/A. WORKS MADE ON OR AFTER 1 AUGUST 1989/111. Author of literary, dramatic, musical and artistic works.

111. Author of literary, dramatic, musical and artistic works.

The author is the person who creates the work¹, that is to say, he is the person who actually writes, compiles, composes or draws the work in question, although the idea of the work may have been suggested by another², or the work may have been subsequently altered in accordance with the advice of another³. Where, however, the compiler of a directory or work of reference collects written material from a large number of individuals and arranges and publishes the result, the compiler, and not the individuals supplying the information, is the author of the work⁴. A mere copyist or a person to whom words are dictated for the purposes of being written down is not an author; but a translator from one language into another or a reporter of legal decisions or of a speech is an author⁵.

The author of a photograph will usually be the photographer who takes it, but the person who arranged the subject matter of the photograph, provided that he directs how and when the photograph is taken⁶, may be an author, or possibly even the person who develops and prints it, provided that in the latter case some skill other than that of mere copying is deployed⁷.

The author of the design of a building in which copyright subsists⁸ is the architect who makes the plans and supervises the work and not the builder⁹.

The author of a work of artistic craftsmanship¹⁰ is someone who has exercised both the artistry and the craftsmanship¹¹, even though he may have derived the idea from someone who had nothing to do with the craftsmanship¹². Where such skills are not combined in one person, it may be that the work produced is a work of joint authorship¹³.

1 See the Copyright, Designs and Patents Act 1988 s 9(1); and PARA 110 ante. This effects no change from the previous law and cases decided under previous enactments are still good law.

2 *Kenrick & Co v Lawrence & Co* (1890) 25 QBD 99 (a person who could not draw held not to be the author of a design drawn by his direction); *Springfield v Thame* (1903) 89 LT 242 (the writer-up of news supplied to a newspaper, and not the person supplying the news, held to be the author of the report); *Evans v E Hulton & Co Ltd* (1924) 131 LT 534 (a person who wrote up the adventures of another held to be the author of the story); *Cummins v Bond* [1927] 1 Ch 167 (a spiritualist medium held to be the author of material written by her though said to emanate from an outside source). See also *Leah v Two Worlds Publishing Co Ltd* [1951] Ch 393; *Donoghue v Allied Newspapers Ltd* [1938] Ch 106, [1937] 3 All ER 503 (journalist wrote a life story on facts supplied by the subject thereof; journalist held to be author); but see *Heptulla v Orient Longman Ltd* [1989] FSR 598; *Wiseman v George Weidenfeld & Nicholson Ltd and Donaldson* [1985] FSR 525 (critic and adviser as to how a play should be structured held not to be an author); *Ashmore v Douglas-Home* (1982) [1987] FSR 553 (person who suggested ideas for a play held not to be an author); *Rebeschini v Miles Laboratories (Aust) Ltd* (1982) 1 IPR 159, Vict SC (changes to drawings held to be too insufficient to make a person co-author). It is often a question of fact and degree whether one person's contribution is or is not sufficient to constitute them joint authors (see PARA 113 post): *Stuart v Barrett* [1994] EMLR 448; and see *Prior v Lansdowne Press Pty Ltd* [1977] RPC 511, Vict SC.

3 *Samuelson v Producers Distributing Co Ltd* [1932] 1 Ch 201, CA; *Wiseman v George Weidenfeld & Nicholson Ltd and Donaldson* [1985] FSR 525.

4 *A and C Black Ltd v Claude Stacey Ltd* [1929] 1 Ch 177 at 179 per Tomlin J, following *Nisbet & Co Ltd v Golf Agency* (1907) 23 TLR 370. It is possible that there is no identifiable author, in which case the statutory presumptions (see PARA 431 post) may have to be relied upon: *Waterlow Publishers Ltd v Rose* (1989) [1995] FSR 207, CA.

5 *Walter v Lane* [1900] AC 539 at 554, HL, per Lord James of Hereford; *Hodges v Welsh* (1840) 2 I Eq R 266. This is still good law: see *Express Newspapers plc v News (UK) Ltd* [1990] 3 All ER 376, [1990] FSR 359.

6 *Creation Records Ltd v News Group Newspapers Ltd* [1997] EMLR 444.

7 This is a change from the law under the Copyright Act 1956 (repealed): see PARA 115 post. As to the necessary skill and labour see PARA 65 ante.

8 See PARAS 74-76, 79 ante.

9 *Meikle v Maufe* [1941] 3 All ER 144.

10 As to works of artistic craftsmanship see PARA 80 ante.

11 *Vermaat v Boncrest Ltd* [2001] FSR 43, [2000] All ER (D) 737. Cf *Burke and Margot Burke Ltd v Spicers Dress Designs* [1936] Ch 400, [1936] 1 All ER 99.

12 *George Hensher Ltd v Restawhile Upholstery (Lancs) Ltd* [1976] AC 64, [1974] 2 All ER 420, CA.

13 As to works of joint authorship see PARA 113 post.

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112. Authorship of sound recordings and films.

In the case of both sound recordings and films the author is taken to be the producer, that is to say the person who made the arrangements necessary for making the recording or film, as the case may be, although in the case of films made on or after 1 July 1994 the principal director is also an author¹. In many cases the author will be the record or film company responsible for organising the making of the recording or film². The person who provides the finance, all the equipment and the film's individual producer is the author of the film and not the person he contracted to provide the director, cast and camera crew³. Merely providing the finance does not amount to making the necessary arrangements⁴. Where a recording or film is made as a result of collaborative work so that it is difficult to say that one person alone has made all the arrangements necessary for its making, it is likely to be treated as a work of joint authorship⁵.

1 See PARA 110 ante.

2 See *Mad Hat Music Ltd v Pulse 8 Records Ltd* [1993] EMLR 172; *A & M Records Ltd v Video Collection International Ltd (BBC Enterprises Ltd, third party)* [1995] EMLR 25; *Bamgboye v Reed* [2002] EWHC 2922 (QB), [2004] EMLR 61, [2002] All ER (D) 435 (Nov).

3 *Century Communications Ltd v Mayfair Entertainment UK Ltd* [1993] EMLR 335.

4 *Beggars Banquet Records Ltd v Carlton Television Ltd* [1993] EMLR 349.

5 See *Beggars Banquet Records Ltd v Carlton Television Ltd* [1993] EMLR 349 (record company commissioned a film and video company to produce a video of a 'rave' party where the record company provided the music and arranged for access for the filming; arguably joint authorship in an interim decision). See also *Secretary of State for the Home Department v Central Broadcasting Ltd* [1993] EMLR 253 at 270, CA; *Adventure Film Productions SA v Tully* [1993] EMLR 376; *A & M Records Ltd v Video Collection International Ltd (BBC Enterprises Ltd, third party)* [1995] EMLR 25. As to works of joint authorship see PARA 113 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(ii) Authorship/A. WORKS MADE ON OR AFTER 1 AUGUST 1989/113. Works of joint authorship.

113. Works of joint authorship.

There are special provisions relating to copyright in works of joint authorship¹.

A 'work of joint authorship' means a work produced by the collaboration of two or more authors² in which the contribution of one author is not distinct from that of the other author or authors³. A film⁴ made on or after 1 July 1994⁵ is to be treated as a work of joint authorship unless the producer⁶ and the principal director are the same person⁷. A broadcast⁸ is treated as a work of joint authorship in any case where more than one person is to be taken⁹ as making the broadcast¹⁰.

There must be a common design and co-operation in the work of carrying out the design to constitute joint authorship¹¹, but 'common design' in this context does not mean an intention that there should be joint authorship¹². The contribution which a person claiming to be a joint author makes has to be a contribution towards the creation of the work and a contribution, even a significant one, of a different kind does not cause him to be a joint author¹³. A claimant to joint authorship in a work must establish that he has made a significant and original contribution to the creation of the work and that he has done so pursuant to a common design¹⁴. In determining whether a person is a joint author it is necessary to determine whether the putative author has contributed the right kind of skill and labour and whether his contribution is big enough in order for him to be considered an author¹⁵. A person is not a joint author who only suggests the subject matter or idea of the work¹⁶; nor is the person who makes alterations or additions to the work, for the purpose of rendering it more attractive, a joint author¹⁷.

Subject to the special provisions as to works of joint authorship, references in the Copyright, Designs and Patents Act 1988¹⁸ to the author of a work are, unless it is otherwise provided, to be construed, in relation to a work of joint authorship, as references to all the authors of the work¹⁹.

1 As to the term of copyright in such works see PARAS 96 note 8, 102 notes 7, 10 ante; and as to co-ownership of copyright in such works see PARA 121 post.

2 For the meaning of 'author' see PARA 110 ante.

3 Copyright, Designs and Patents Act 1988 s 10(1).

4 For the meaning of 'film' see PARA 86 ante.

5 The amendments to the Copyright, Designs and Patents Act 1988 s 10 made by the Copyright and Related Rights Regulations 1996, SI 1996/2967 (as amended) apply in relation to films made on or after 1 July 1994: see reg 36(1).

6 For the meaning of 'producer' see PARA 110 note 3 ante.

7 Copyright, Designs and Patents Act 1988 s 10(1A) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(2)).

8 For the meaning of 'broadcast' see PARA 89 ante.

9 Ie under the Copyright, Designs and Patents Act 1988 s 6(3): see PARA 89 ante.

10 Ibid s 10(2).

- 11 *Levy v Rutley* (1871) LR 6 CP 523; *Stuart v Barrett* [1994] EMLR 448; *Heptulla v Orient Longman Ltd* [1989] FSR 598.
- 12 *Beckingham v Hodgins* [2003] EWCA Civ 143, [2003] IP & T 1115, [2003] EMLR 376.
- 13 *Fylde Microsystems Ltd v Key Radio Systems Ltd* [1998] FSR 449; *Ray v Classic FM* [1998] FSR 622, [1998] All ER (D) 105; *Brighton v Jones* [2004] EWHC 1157 (Ch), [2005] IP & T 223, [2004] EMLR 507.
- 14 *Stuart v Barrett* [1994] EMLR 448; *Godfrey v Lees* [1995] EMLR 307; *Cala Homes (South) Ltd v Alfred McAlpine Homes East Ltd* [1995] FSR 818; *Brown v Mcasso Music Production Ltd* [2005] FSR 846 (on appeal on another point [2005] EWCA Civ 1546, [2005] All ER (D) 145 (Nov)). However, the standard of originality is not high: *Godfrey v Lees* supra; *Redwood Music Ltd v Chappell & Co Ltd* [1982] RPC 109.
- 15 *Fylde Microsystems Ltd v Key Radio Systems Ltd* [1998] FSR 449; *Hadley v Kemp* [1999] EMLR 589; *Pierce v Promco SA* [1999] ITCLR 233.
- 16 *Tate v Thomas* [1921] 1 Ch 503; *Tate v Fullbrook* [1908] 1 KB 821, CA; *Bagge v Millar* (1920) MacG Cop Cas (1917-23) 179; *Ashmore v Douglas-Home* (1982) [1987] FSR 553.
- 17 *Levy v Rutley* (1871) LR 6 CP 523; *Wiseman v George Weidenfeld & Nicholson Ltd and Donaldson* [1985] FSR 525. Cf *Brown v Mcasso Music Production Ltd* [2005] FSR 846; on appeal on another point [2005] EWCA Civ 1546, [2005] All ER (D) 145 (Nov).
- 18 le in the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).
- 19 Ibid s 10(3).

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114. Works of 'unknown authorship'.

A work is of 'unknown authorship' if the identity of the author¹ is unknown or, in the case of a work of joint authorship², if the identity of none of the authors is known³. The identity of an author is to be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but, if his identity is once known, it may not subsequently be regarded as unknown⁴.

1 For the meaning of 'author' see PARA 110 ante. As to who is the author of a work see PARAS 110-112 ante.

2 For the meaning of 'work of joint authorship' see PARA 113 ante.

3 Copyright, Designs and Patents Act 1988 s 9(4). As to the term of copyright in such works see PARAS 96, 102 ante.

4 Ibid s 9(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(ii) Authorship/B. WORKS MADE ON OR AFTER 1 JUNE 1957 AND BEFORE 1 AUGUST 1989/115. Authorship.

B. WORKS MADE ON OR AFTER 1 JUNE 1957 AND BEFORE 1 AUGUST 1989

115. Authorship.

The law in force relating to authorship of works made between 1 June 1957 and 31 July 1989 inclusive was the Copyright Act 1956¹. That Act did not define the expression 'author' in relation to literary², dramatic³, musical⁴ or artistic⁵ works, other than photographs⁶, and the meaning was derived from case law as the person who had created the work⁷. The author of a photograph was defined as the person who, at the time the photograph was taken, was the owner of the material on which it was taken⁸. In relation to sound recordings⁹ and cinematograph films¹⁰, the 'author' was referred to as the 'maker' who, in the case of a sound recording, was the person who owned the first record¹¹ embodying the recording at the time when the recording was made¹², and, in the case of a cinematograph film, was the person by whom the arrangements necessary for making the film were undertaken¹³. The British Broadcasting Corporation and the Independent Broadcasting Authority¹⁴ each held the copyrights in broadcasts made by them¹⁵ and there was accordingly no need to define the expression 'author' in relation to broadcasts. The person providing a cable programme service¹⁶ was treated as the author of the cable programmes¹⁷ included in that service¹⁸; and the publisher of a published edition¹⁹ was treated as its author²⁰. The expression 'work of joint authorship' had the same meaning under the Copyright Act 1956²¹ as it has under the Copyright, Designs and Patents Act 1988²², save that the word 'separate' was used instead of 'distinct'²³.

1 As to the continuing relevance of the Copyright Act 1956 (repealed) see PARA 16 ante.

2 For the meaning of 'literary work' see PARA 37 note 2 ante.

3 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

4 The expression 'musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 37 note 6 ante.

6 For the meaning of 'photograph' see PARA 37 note 6 ante.

7 As to who is the author of such works see PARA 111 ante, the principles there expressed being equally applicable to works under the Copyright Act 1956 (repealed) since the meaning of 'author' was not affected by the definition in the Copyright, Designs and Patents Act 1988. For the meaning of 'author' in the Copyright, Designs and Patents Act 1988 see PARA 110 ante.

8 Copyright Act 1956 s 48(1) (repealed).

9 For the meaning of 'sound recording' see PARA 37 note 7 ante.

10 For the meaning of 'cinematograph film' see PARA 37 note 8 ante.

11 For the meaning of 'record' see PARA 37 note 7 ante.

12 Copyright Act 1956 s 12(8) (repealed).

13 Ibid s 13(1) (repealed). Such a person is now referred to in the Copyright, Designs and Patents Act 1988 as 'the producer': see PARA 110 note 3 ante. See also PARA 112 ante.

14 As to the British Broadcasting Corporation see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 306 et seq. The Independent Broadcasting Authority no longer exists: see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 328.

15 Copyright Act 1956 s 14(1) (repealed).

16 For the meaning of 'cable programme service' see PARA 37 note 12 ante.

17 For the meaning of 'cable programme' see PARA 37 note 11 ante.

18 Copyright Act 1956 s 14A(3) (added by the Cable and Broadcasting Act 1984 s 22; repealed).

19 The expression 'published edition' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'published edition' in the Copyright, Designs and Patents Act 1988 see PARA 92 ante.

20 Copyright Act 1956 s 15(2) (repealed).

21 See ibid s 11(3) (repealed); and PARA 37 note 26 ante.

22 See the Copyright, Designs and Patents Act 1988 s 10(3); and PARA 113 ante.

23 As to such works under the Copyright, Designs and Patents Act 1988 see PARA 113 ante, the principles there expressed being equally applicable to works under the Copyright Act 1956 (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(ii) Authorship/C. WORKS MADE ON OR AFTER 1 JULY 1912 AND BEFORE 1 JUNE 1957/116. Authorship.

C. WORKS MADE ON OR AFTER 1 JULY 1912 AND BEFORE 1 JUNE 1957

116. Authorship.

The law in force between 1 July 1912 and 31 May 1957 inclusive was the Copyright Act 1911¹. That Act did not define the expression 'author' in relation to literary², dramatic³, musical⁴ or artistic⁵ works, except for photographs, and the meaning was derived from case law as the person who had created the work⁶. The person who was the owner of the original photographic negative when it was made was deemed to be the author of the photograph⁷. Sound recordings, defined as records, perforated rolls, and other contrivances by means of which sounds could be mechanically reproduced⁸, were protected as if they were musical works⁹ and the person who was the owner of the original plate¹⁰, from which the contrivance was directly or indirectly derived, at the time when the plate was made was deemed to be the author¹¹. Cinematograph films were protected as dramatic works; but there was no definition of who was the author of a film treated as a dramatic work. The combination of the incidents portrayed and perhaps some of the 'character' of the film¹² could have been supplied by the script or scenario writer, in which case he would be the sole author or one of the authors, if others also contributed to the creation of the film as an artistic work. However, the director was the person most likely to have supplied the film with its original character and was the most obvious candidate for authorship. Alternatively, there could have been joint or separate authors where more than one person had contributed to the film¹³. Cinematograph films were also protected as a series of photographs, and the application of the provisions relating to authorship¹⁴ meant that in most cases the producer was the owner of the photographic copyright. Broadcasts, cable programmes and the typographical arrangements of published editions were not protected under the Copyright Act 1911. The expression 'work of joint authorship' was defined¹⁵ in the same way as in the Copyright, Designs and Patents Act 1988¹⁶.

1 As to the continuing relevance of the Copyright Act 1911 see PARA 16 ante.

2 For these purposes, 'literary work' included maps, charts, plans, tables and compilations: *ibid* s 35(1) (repealed). Maps were treated as literary works and not, as they were by later statutes, as artistic works.

3 For these purposes, 'dramatic work' included any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which was fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents gave the work an original character: *ibid* s 35(1) (repealed).

4 The expression 'musical work' was not defined by the Copyright Act 1911. For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 ante.

5 For these purposes, 'artistic work' included works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings or photographs: Copyright Act 1911 s 35(1) (repealed). 'Photograph' included photo-lithographs and any work produced by a process akin to photography (s 35(1) (repealed)); and 'work of sculpture' included casts and models (s 35(1) (repealed)). 'Architectural work of art' meant any building or structure having an artistic character or design, in respect of such character or design, or any model for such a building or structure, protection being confined to the artistic character and design and not extending to processes or methods of construction: s 35(1) (repealed). 'Work of artistic craftsmanship' was not defined in the Copyright Act 1911; but cf PARA 80 ante.

6 As to who is the author of such works see PARA 111 ante, the principles there expressed being equally applicable to works under the Copyright Act 1911 since the meaning of 'author' was not affected by the

definition in the Copyright, Designs and Patents Act 1988. For the meaning of 'author' in the Copyright, Designs and Patents Act 1988 see PARA 110 ante.

7 Copyright Act 1911 s 21 (repealed).

8 Ibid s 19 (repealed).

9 Ibid s 19 (repealed).

10 For these purposes, 'plate' meant any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic presentation of a work were or were intended to be made: *ibid* s 35(1) (repealed).

11 Ibid s 19 (repealed).

12 See note 3 *supra*.

13 It was held by the Scottish courts that there could be separate authors of the plot, the scenario and the artistic work in a cinematograph film: *Milligan v Broadway Cinema Ltd* 1923 SLT 35.

14 See text to note 7 *supra*.

15 See the Copyright Act 1911 s 16(3) (repealed).

16 See the Copyright, Designs and Patents Act 1988 s 10(1); and PARA 113 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(ii) Authorship/D. WORKS MADE BEFORE 1 JULY 1912/117. Authorship.

D. WORKS MADE BEFORE 1 JULY 1912

117. Authorship.

Works made before 1 July 1912 were protected by a series of enactments¹. None of these defined the expression 'author' and the meaning was derived from case law as the person who had created the work². Works of architecture and works of artistic craftsmanship were not protected prior to the Copyright Act 1911³.

1 See PARA 17 et seq ante.

2 For the meaning of 'author' in the Copyright, Designs and Patents Act 1988 see PARA 110 ante. That meaning is equally applicable to works made before 1 July 1912, no change having been effected by the definition in the Copyright, Designs and Patents Act 1988. The author of a photograph was the person who immediately controlled and arranged the taking of the photograph (*Nottage v Jackson* (1883) 11 QBD 627 at 632, CA, per Brett MR), and not the person who performed the manual operation of making the exposure under the control of another (*Melville v Mirror of Life Co* [1895] 2 Ch 531).

3 As to authorship under the Copyright Act 1911 see PARA 116 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/A. WORKS MADE ON OR AFTER 1 AUGUST 1989/118. First ownership of copyright.

(iii) Ownership

A. WORKS MADE ON OR AFTER 1 AUGUST 1989

118. First ownership of copyright.

The author¹ of a work is the first owner of any copyright² in it³. Where, however, a literary⁴, dramatic⁵, musical⁶ or artistic⁷ work, or a film⁸ made on or after 1 July 1994⁹, is made by an employee¹⁰ in the course of his employment¹¹, his employer¹² is the first owner of any copyright in the work, subject to any agreement to the contrary¹³.

These provisions do not apply to Crown copyright¹⁴, Parliamentary copyright¹⁵, or copyright¹⁶ of certain international organisations¹⁷.

1 For the meaning of 'author' see PARA 110 ante.

2 For the meaning of 'copyright' see PARA 57 ante.

3 Copyright, Designs and Patents Act 1988 s 11(1).

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'dramatic work' see PARA 73 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 For the meaning of 'artistic work' see PARA 75 ante.

8 For the meaning of 'film' see PARA 86 ante.

9 The amendments to the Copyright, Designs and Patents Act 1988 s 11(2) made by the Copyright and Related Rights Regulations 1996, SI 1996/2967 (as amended) apply in relation to films made on or after 1 July 1994: see reg 36(1).

10 'Employee' means an employee under a contract of service or apprenticeship: see the Copyright, Designs and Patents Act 1988 s 178. As to contracts of service or apprenticeship see PARA 120 post.

11 'Employment' means employment under a contract of service or apprenticeship: see *ibid* s 178.

12 'Employer' means an employer under a contract of service or apprenticeship: see *ibid* s 178.

13 *Ibid* s 11(2) (amended by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(3)).

14 For the meaning of 'Crown copyright' see PARA 144 post.

15 For the meaning of 'Parliamentary copyright' see PARA 150 post.

16 *Ie* which subsists by virtue of the Copyright, Designs and Patents Act 1988 s 168: see PARA 155 post.

17 *Ibid* s 11(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/A. WORKS MADE ON OR AFTER 1 AUGUST 1989/119. Film soundtracks.

119. Film soundtracks.

Film¹ soundtracks made on or after 1 January 1996² are protected by film copyright³ when accompanying the film⁴ and by sound recording copyright⁵ in all other circumstances⁶. Ownership of each of those copyrights is determined in accordance with the normal rules applicable to that type of copyright⁷, and it is possible for there to be different owners of those copyrights. On and after 1 January 1996 the owner of any copyright in a film made before that date has corresponding rights in any existing soundtrack treated as part of the film, but without prejudice to any rights of the owner of the copyright in the soundtrack as a sound recording⁸.

1 For the meaning of 'film' see PARA 86 ante.

2 I.e. the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).

3 As to copyright in films see PARA 85 ante.

4 See the Copyright, Designs and Patents Act 1988 s 5B(2) (as added); and PARA 87 ante.

5 As to copyright in sound recordings see PARA 83 ante. For the meaning of 'sound recording' see PARA 84 ante.

6 See the Copyright, Designs and Patents Act 1988 s 5B(5) (added); and PARA 87 ante.

7 See PARA 118 ante.

8 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 26(2). Anything done before 1 January 1996 under or in relation to the copyright in the sound recording continues to have effect and has effect, so far as concerns the soundtrack, in relation to the film as in relation to the sound recording: reg 26(3). It is not an infringement of the copyright in the film, or of any moral right in the film, to do anything on and after 1 January 1996 in pursuance of arrangements for the exploitation of the sound recording made before that date: reg 26(4). As to moral rights see PARA 455 et seq post.

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120. Contracts of service and apprenticeship.

A contract of service is not the same thing as a contract for services, the distinction being the same as that between an employee and an independent contractor; an employee is a person who agrees to provide his own work and skill in the performance of some service for his employer and who is subject to the control of his employer in performance of that service¹. The existence of direct control by the employer, the degree of independence on the part of the person who renders services, and the place where the service is rendered, are all matters to be considered in determining whether there is a contract of service².

The copyright³ in work done by an employee in his own time and not in the course of his employment is in the employee⁴. A person may be employed under a mixed contract which is partly a contract of service and partly a contract for services so that the work done in pursuance of one part of the contract vests in the employer and that in pursuance of the other part in the author⁵.

A director may also enter into a contract for services with a company, in which case works produced by him pursuant to that contract belong to the company⁶. Alternatively, if there is no such contract, the director may hold any copyrights on trust for the company⁷.

A contract of apprenticeship is one where the apprentice is bound to the employer for the purpose of learning a trade or calling⁸, and for the purposes of the Copyright, Designs and Patents Act 1988 an apprentice is in the same position as any employee⁹.

1 As to contracts of service see EMPLOYMENT vol 39 (2009) PARA 4.

2 *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 at 610-611 per Peterson J (the copyright in examination papers prepared by examiners employed by a university vested in the examiners and not in the university); and see *Noah v Shuba* [1991] FSR 14 (copyright in guide to hygienic skin piercing written by consultant epidemiologist belonged to author). See also *Harold Drabble Ltd v Hycolite Manufacturing Co* (1928) 44 TLR 264 (copyright in advertisement prepared by agent on materials supplied by the advertiser belonged to the advertiser); *Ware v Anglo-Italian Commercial Agency Ltd* (1922) MacG Cop Cas (1917-23) 346 (designer of motor car bodies an employee for the purpose of vesting copyright in employer); *Beloff v Pressdram Ltd* [1973] 1 All ER 241 (newspaper contributor employed under contract of service). See generally EMPLOYMENT vol 39 (2009) PARA 2 et seq.

3 For the meaning of 'copyright' see PARA 57 ante.

4 *Byrne v Statist Co* [1914] 1 KB 622 (copyright in a translation of a speech made by a member of the staff of a newspaper in his own time vested in the translator).

5 *Stevenson, Jordan and Harrison Ltd v MacDonald and Evans* [1952] 1 TLR 101, CA (where it was held that an employee who for the benefit of his firm delivered lectures relating to the subject matter of the firm's business retained the copyright in the lectures).

6 See eg *Parsons v Albert J Parsons & Sons Ltd* [1979] FSR 254, CA; *Re Beeton & Co Ltd* [1913] 2 Ch 279; *Lee v Lee's Air Farming Ltd* [1961] AC 12, [1960] 3 All ER 420, PC; *Gardex Ltd v Sorata Ltd* [1986] RPC 623. See also EMPLOYMENT vol 39 (2009) PARA 10.

7 See PARA 122 post. See also *Antocks Lairn Ltd v I Bloohn Ltd* [1972] RPC 219; *Kambrook Distributing Pty Ltd v Delaney* (1984) 4 IPR 79.

8 See EMPLOYMENT vol 39 (2009) PARA 9.

9 An employee under a contract of apprenticeship falls within the definition of 'employee' for the purposes of the Copyright, Designs and Patents Act 1988: see s 178; and PARA 118 note 10 ante.

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121. Joint owners.

Joint owners are in the position of tenants in common and not of joint tenants both where the joint ownership arose out of joint authorship¹ and where it arose in some other way². One joint owner may not lawfully reproduce the work himself³ or grant licences to others to reproduce it⁴ without the consent of the other joint owner or owners, but he may by himself take proceedings for infringement⁵.

Where copyright⁶, or any aspect of copyright, is owned by more than one person jointly, references⁷ to the copyright owner are references to all the owners, so that, in particular, any requirement for the licence of the copyright owner requires the licence of all of them⁸.

Where a work of joint authorship qualifies for copyright protection by virtue only of the qualifying status of one or some of the authors, only those authors who have such qualifying status are to be taken into account for the purposes of first ownership of copyright⁹.

1 For the meaning of 'work of joint authorship' see PARA 113 ante.

2 *Powell v Head* (1879) 12 ChD 686 at 689-690 per Jessel MR; and see *Trade Auxiliary Co v Middlesborough and District Tradesmen's Protection Association* (1889) 40 ChD 425, CA; *Prior v Lansdowne Press Pty Ltd* [1977] RPC 511, Vict SC; *Redwood Music Ltd v B Feldman & Co Ltd* [1979] RPC 385, CA; *Acorn Computers Ltd v MCS Microcomputer Systems Pty Ltd* (1984) 4 IPR 214.

3 *Cescinsky v George Routledge & Sons Ltd* [1916] 2 KB 325.

4 *Powell v Head* (1879) 12 ChD 686.

5 *Lauri v Renad* [1892] 3 Ch 402, CA; and see *Cate v Devon and Exeter Constitutional Newspaper Co* (1889) 40 ChD 500; *Prior v Lansdowne Press Pty Ltd* [1977] RPC 511, Vict SC.

6 For the meaning of 'copyright' see PARA 57 ante.

7 In the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

8 *Ibid* s 173(2). As to licences see PARA 175 et seq post.

9 See *ibid* s 154(3); and PARA 60 ante.

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122. Equitable ownership.

Ownership in equity may arise where the circumstances are such that the author¹ may properly be regarded as holding the copyright² on trust for another. For example, the work may have been created by a director in the course of duties³ or by an employee, who is the first owner⁴, in circumstances where it would be inequitable for him to claim rights as against his employer⁵, or it may have been created by a partnership⁶ or the copyright work may have been brought into existence at the request of and on the instructions of the intended owner who has paid for the making of the work⁷. An equitable owner may sue for infringement⁸ and may obtain interim relief⁹ but he must join the legal owner in the claim in order to obtain final relief¹⁰.

1 As to authorship see PARA 110 et seq ante.

2 For the meaning of 'copyright' see PARA 57 ante.

3 *Antocks Lairn Ltd v I Bloohn Ltd* [1972] RPC 219 (where it was conceded that the managing director held copyright in drawings on trust for the company); *Wilden Pump & Engineering Co v Fusfeld* (1985) 8 IPR 250 (receipt of royalties by managing director from company negated claim by company to equitable ownership); *Kambrook Distributing Pty Ltd v Delaney* (1984) 4 IPR 79 (managing director made sketches on behalf of company but confirmatory assignment also executed).

4 As to first ownership of copyright see PARAS 118, 120 ante.

5 See *Missing Link Software v Magee* [1989] FSR 361 (work created by moonlighting employee arguably held on trust for employer; interim decision). See also *A-G v Observer Ltd*, *A-G v Times Newspapers Ltd* [1990] 1 AC 109 at 233, sub nom *A-G v Guardian Newspapers Ltd (No 2)* [1988] 3 All ER 545 at 638, HL (copyright in ex-intelligence officer's memoirs written in breach of confidence held obiter to be held on constructive trust for the Crown); but see *A-G v Blake* [1996] FSR 727 (where it was held obiter that this view was inconsistent with *Lister & Co v Stubbs* (1890) 45 ChD 1, CA, and *Halifax Building Society v Thomas* [1996] Ch 217, [1995] 4 All ER 673, CA). See also *Service Corp'n International plc v Channel Four Television Corp'n* [1999] EMLR 83.

6 *Roban Jig & Tool Co Ltd and Elkadart Ltd v Taylor* [1979] FSR 130, CA; *O'Brien v Komesaroff* (1982) 41 ALR 255, Aust HC; *Murray v King* [1986] FSR 116; *John Richardson Computers Ltd v Flanders* [1993] FSR 497.

7 *Massine v de Basil* (1938) MacG Cop Cas (1936-45) 223 (choreographer commissioned to compose a ballet); *Harold Drabble Ltd v Hycolite Manufacturing Co* (1928) MacG Cop Cas (1923-28) 322 (advertising agent paid to write copy for client); *R Griggs Group Ltd v Evans* [2005] EWCA Civ 11, [2005] IP & T 870, [2005] FSR 706 (worldwide rights in logo); *Hutchison Personal Communications Ltd v Hook Advertising Ltd* [1996] FSR 549 (implicit representation by advertising agency at a 'pitch' that client would own all rights in a logo design if agency appointed); *A & M Records Ltd v Video Collection International Ltd (BBC Enterprises Ltd, third party)* [1995] EMLR 25 (person commissioned to make sound recordings suitable for use by champion ice skaters). See also *Nichols Advanced Vehicle Systems Inc v Rees* [1979] RPC 127 at 139; *Ornamin (UK) Ltd v Bacsa Ltd and Viking Industrial Plastics Ltd* [1964] RPC 293; *Merchant Adventurers Ltd v M Grew & Co (t/a Emess Lighting)* [1972] Ch 242, [1971] 2 All ER 657; *Cala Homes (South) Ltd v Alfred McAlpine Homes East Ltd* [1995] FSR 818; *Ironside v A-G* [1988] RPC 197; *Saphena Computing Ltd v Allied Collection Agencies Ltd* [1995] FSR 616, CA.

8 As to infringement of copyright see PARA 311 et seq post.

9 *Merchant Adventurers Ltd v M Grew & Co (t/a Emess Lighting)* [1972] Ch 242, [1971] 2 All ER 657.

10 *Performing Right Society Ltd v London Theatre of Varieties* [1924] AC 1, HL; *Three Rivers District Council v Governor and Co of the Bank of England* [1996] QB 292, [1995] 4 All ER 312, CA.

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B. WORKS MADE ON OR AFTER 1 JUNE 1957 AND BEFORE 1 AUGUST 1989

(A) LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS

123. Literary, dramatic, musical and artistic works.

The law in force relating to ownership of works made between 1 June 1957 and 31 July 1989 inclusive was the Copyright Act 1956¹. Subject to certain exceptions², the author³ of a literary⁴, dramatic⁵, musical⁶ or artistic⁷ work was entitled to the copyright in the work⁸.

1 As to the continuing relevance of the Copyright Act 1956 (repealed) see PARA 16 ante.

2 In subject to the provisions relating to works made under a contract of service or of apprenticeship (see PARA 124 post), works made by journalist-employees (see PARA 125 post), commissioned works (see PARA 126 post), and works of joint authorship (see PARA 127 post).

3 For the meaning of 'author' see PARA 115 ante.

4 For the meaning of 'literary work' see PARA 37 note 2 ante.

5 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

6 The expression 'musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 ante.

7 For the meaning of 'artistic work' see PARA 37 note 6 ante.

8 Copyright Act 1956 s 4(1) (repealed).

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124. Works made by employees.

Where the work was made by an employee in the course of his employment¹, his employer was the first owner of any copyright in the work, subject to any agreement to the contrary². To this extent the position under the Copyright Act 1956 was the same as now subsists under the Copyright, Designs and Patents Act 1988³.

1 For these purposes, 'employment' meant employment under a contract of service or apprenticeship: Copyright Act 1956 s 4(4) (repealed).

2 Ibid s 4(4), (5) (repealed).

3 As to first ownership under the Copyright, Designs and Patents Act 1988 see PARA 118 ante; and as to works made under a contract of service or apprenticeship see PARA 120 ante.

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125. Works of journalist-employees.

Where a literary¹, dramatic² or artistic³ work was made by the author⁴ in the course of his employment⁵ by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship⁶, and was so made for the purpose of publication in a newspaper, magazine or similar periodical⁷, the proprietor was entitled to the copyright in the work, subject to any agreement to the contrary, in so far as the copyright related to such publication or to reproduction of the work for the purpose of its being so published⁸. In all other respects, however, the author was entitled to copyright in the work⁹.

1 For the meaning of 'literary work' see PARA 37 note 2 ante.

2 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

3 For the meaning of 'artistic work' see PARA 37 note 6 ante.

4 As to authorship see PARA 115 ante.

5 For the meaning of 'employment' see PARA 124 note 1 ante.

6 As to works made under a contract of service or apprenticeship see PARA 120 ante.

7 Copyright Act 1956 s 4(2) (repealed).

8 Ibid s 4(2), (5) (repealed).

9 Ibid s 4(2), (5) (repealed).

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126. Commissioned artistic works.

When a person commissioned the taking of a photograph¹, or the painting or drawing of a portrait², or the making of an engraving³, and paid or agreed to pay for it in money or money's worth, and the work was made in pursuance of that commission⁴, the person who so commissioned the work was entitled, subject to any agreement to the contrary, to any copyright in it as an original work⁵. The effect was that the person who so commissioned the work was regarded as first owner of the copyright.

If a person went to a photographer and ordered a photograph, there was an implied contract to pay for the original if no copies were ordered, and, therefore, the photograph was made for valuable consideration⁶. If, however, the photographer in the first place requested permission to take the photograph, it depended on the circumstances of the case whether any such implication arose⁷, and, unless there had been an intention to sell before the original had been created, it was impossible to establish that the original was ordered⁸. The fact that the original of a lithograph had been designed by the author before any order had been given did not prevent the person giving the order from being the first owner, if the design had been altered in accordance with the order⁹. Where a person commissioned the making of finished goods and the method by which they were made involved the making of either photographs or engravings, he could be regarded as having commissioned those works so as to be first owner of the copyright in them¹⁰.

1 For the meaning of 'photograph' see PARA 37 note 6 ante.

2 It is possible that 'portrait' covered all kinds of pictorial representation, however produced: *Leah v Two Worlds Publishing Co Ltd* [1951] Ch 393 at 398 per Vaisey J. See also *Duke of Leeds v Earl Amherst* (1844) 14 LJ Ch 73 (painting of man on horseback against a battlefield as background held to be a portrait).

3 For the meaning of 'engraving' see PARA 37 note 6 ante.

4 'Commission' meant giving an order for something to be done. To oust the normal rule that the author was the first owner (see PARA 123 ante), the commission had to pre-date the making of the work: see *Hartnett v Pinkett* (1953) 103 L Jo 204; *Plix Products Ltd v Frank M Winstone (Merchants)* [1986] FSR 63, NZ HC. Some arrangements might be too loose or informal to amount to a commission: see *Apple Corps Ltd v Cooper* [1993] FSR 286. See also *Gabrin v Universal Music Operations Ltd* [2003] EWHC 1335 (Ch), [2003] All ER (D) 212 (Jun) (whether arrangements for a photo shoot amounted to a commission).

5 Copyright Act 1956 s 4(3), (5) (repealed). An identical provision applied to commissioned sound recordings: see s 12(4) proviso (repealed); and PARA 128 post. These provisions also apply to works made on or after 1 August 1989 pursuant to a commission made before that date: Copyright, Designs and Patents Act 1988 s 170, Sch 1 PARA 11(2). See *Gabrin v Universal Music Operations Ltd* [2003] EWHC 1335 (Ch), [2003] All ER (D) 212 (Jun) (alternative agreement found).

6 *Sasha Ltd v Stoenesco* (1929) 45 TLR 350; cf *Hartnett v Pinkett* (1953) 103 L Jo 204 (county court decision relating to wedding photographs).

7 *Sasha Ltd v Stoenesco* (1929) 45 TLR 350 (decided under a similar provision of the Copyright Act 1911).

8 *Leah v Two Worlds Publishing Co Ltd* [1951] Ch 393.

9 *Con Planck Ltd v Kolynos Inc* [1925] 2 KB 804.

¹⁰ *James Arnold and Co Ltd v Miafern Ltd* [1980] RPC 397; *Plix Products Ltd v Frank M Winstone (Merchants)* [1986] FSR 63, NZ HC. For a contrary view see *Cope Allman (Marrickville) Ltd v Farrow* (1984) 3 IPR 567.

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127. Joint owners.

The position relating to joint owners under the Copyright Act 1956 was the same as that which now obtains under the Copyright, Designs and Patents Act 1988¹. Where, however, copyright would not have subsisted in a work if one of the joint authors² had been the sole author (or if more than one of the joint authors had been the sole joint authors)³, the copyright was owned⁴ by the other joint author or authors⁵.

1 See PARA 121 ante.

2 As to authorship see PARA 115 ante.

3 Eg because he was not a qualified person or they were not qualified persons: see PARA 38 ante.

4 ie subject to the provisions mentioned in PARAS 124-126 ante.

5 See the Copyright Act 1956 s 11(2), Sch 3 PARA 4(1), (2) (repealed), by virtue of which s 4(1) (repealed) (see PARA 123 ante) applied as if the author or authors, other than persons such as are mentioned in the text to note 3 supra, had been the sole author or sole joint authors of the work.

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(B) SOUND RECORDINGS, CINEMATOGRAPH FILMS AND FILM SOUNDTRACKS

128. Sound recordings, cinematograph films and film soundtracks.

The law in force relating to ownership of sound recordings¹, cinematograph films² and film soundtracks made between 1 June 1957 and 31 July 1989 inclusive was the Copyright Act 1956³.

The maker, that is to say the person who owned the recording at the time it was made⁴, was entitled to copyright in a sound recording⁵. Where a person commissioned a recording and paid or agreed to pay for it in money or money's worth, the person entitled to the copyright, in the absence of agreement to the contrary, was the person who commissioned the recording⁶.

The person entitled to copyright in a cinematograph film⁷ was the maker⁸, that is to say the person by whom the arrangements necessary for the making of the film were made⁹.

On and after 1 January 1996¹⁰ the owner of any copyright in a film made before that date has corresponding rights in any soundtrack treated as part of a film, but without prejudice to any rights of the owner of the copyright in the soundtrack as a sound recording¹¹. Ownership of each of those copyrights is determined in accordance with the normal rules applicable to that type of copyright, and it is possible for there to be different owners of those copyrights. Film soundtracks¹² made between 1 June 1957¹³ and 31 July 1989 inclusive were treated prior to 1 January 1996 as having sound recording copyright only¹⁴. However, the first owner of the film copyright is to be treated as the first owner of the sound recording copyright¹⁵.

1 For the meaning of 'sound recording' see PARA 37 note 7 ante.

2 For the meaning of 'cinematograph film' see PARA 37 note 8 ante.

3 As to the continuing relevance of the Copyright Act 1956 (repealed) see PARA 16 ante.

4 Copyright Act 1956 s 12(8) (repealed). A sound recording was taken to be made when the first record embodying the recording was produced: s 12(8) (repealed). For the meaning of 'record' see PARA 37 note 7 ante.

5 Ibid s 12(4) (repealed).

6 Ibid s 12(4) proviso (repealed). Section 12(4) proviso (repealed) was subject to Pt VI (ss 36-51) (repealed): see s 12(4) proviso (repealed). An identical provision applies to commissioned artistic works: see PARA 126 ante.

7 As to the person entitled to the copyright in a cinematograph film see PARA 43 ante.

8 Copyright Act 1956 s 13(4) (repealed). Section 13(4) (repealed) was subject to Pt VI (repealed): s 13(4) (repealed).

9 Ibid s 13(10) (repealed). See also PARA 112 ante.

10 Ie the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).

11 Ibid reg 26(2).

12 le the sounds embodied in any soundtrack associated with the film: see the Copyright Act 1956 s 13(9) (repealed).

13 le the date on which the Copyright Act 1956 came into force in the United Kingdom: see PARA 35 ante. There is no film copyright as such prior to 1 June 1957, such films being protected either as original dramatic works or as a series of photographs: see PARA 43 ante.

14 Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 8(1); Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 26(1). As to the conditions for subsistence of copyright in film soundtracks made before 1 August 1989 see PARA 87 ante.

15 Copyright, Designs and Patents Act 1988 Sch 1 para 8(2)(b).

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(C) BROADCASTS, CABLE PROGRAMMES AND PUBLISHED EDITIONS

129. Broadcasts, cable programmes and published editions.

The British Broadcasting Corporation and the Independent Broadcasting Authority each held the copyright in broadcasts made by them¹.

The person who provided a cable programme service² was the first owner of the copyright in any cable programme³ included in that service⁴.

The owner of copyright in a published edition⁵ was the publisher of the edition⁶.

1 See the Copyright Act 1956 s 14(2) (repealed); the Independent Broadcasting Authority Act 1973 s 38 (repealed); the Broadcasting Act 1981 s 65(3), Sch 8 para 7 (repealed); and PARA 44 ante. As to the British Broadcasting Corporation see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 306 et seq. The Independent Broadcasting Authority no longer exists: see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 328.

2 For the meaning of 'cable programme service' see PARA 37 note 12 ante.

3 For the meaning of 'cable programme' see PARA 37 note 11 ante.

4 Copyright Act 1956 s 14A(3) (added by the Cable and Broadcasting Act 1984 s 22; repealed). No copyright subsists in a broadcast by cable made before 1 January 1985: Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 9(b) (substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 16(a)). For the meaning of 'broadcast' see PARA 89 ante.

5 The expression 'published edition' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'published edition' in the Copyright, Designs and Patents Act 1988 see PARA 92 ante.

6 Copyright Act 1956 s 15(2) (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/C. WORKS MADE ON OR AFTER 1 JULY 1912 AND BEFORE 1 JUNE 1957/130. Author as first owner.

C. WORKS MADE ON OR AFTER 1 JULY 1912 AND BEFORE 1 JUNE 1957

130. Author as first owner.

The law in force between 1 July 1912 and 31 May 1957 inclusive was the Copyright Act 1911¹. Subject to certain exceptions², the author³ was the first owner of the copyright in the work⁴. The person who was the owner of the original photographic negative when it was made was deemed to be the author and first owner of the copyright in a photograph⁵. Sound recordings, defined as records, perforated rolls, and other contrivances by means of which sounds could be mechanically reproduced, were protected as if they were musical works⁶ and the person who was the owner of the original plate⁷, from which the contrivance was directly derived, at the time when the plate was made was deemed to be the author and first owner of the copyright⁸. Cinematograph films were protected as dramatic works⁹ and also as a series of photographs¹⁰ and the normal rules as to ownership of works of those two categories of copyright applied. Broadcasts, cable programmes and the typographical arrangement of published editions were not protected under the Copyright Act 1911.

1 As to the continuing relevance of the Copyright Act 1911 see PARA 16 ante.

2 Ie subject to the provisions relating to works of employees (see PARA 131 post), works of journalist employees (see PARA 132 post), and commissioned engravings, photographs or portraits (see PARA 133 post).

3 As to authorship see PARA 116 ante.

4 Copyright Act 1911 s 5(1) (repealed).

5 See *ibid* s 21 (repealed).

6 See *ibid* s 19 (repealed).

7 For the meaning of 'plate' see PARA 116 note 10 ante.

8 See the Copyright Act 1911 s 19 (repealed).

9 *Ibid* ss 1, 35(1) (repealed). As to who was the author of a film treated as a dramatic work see PARA 116 ante.

10 See *ibid* ss 1, 21 (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/C. WORKS MADE ON OR AFTER 1 JULY 1912 AND BEFORE 1 JUNE 1957/131. Works made by employees.

131. Works made by employees.

Where the work was made by an employee¹ in the course of his employment, his employer was the first owner of any copyright in the work, subject to any agreement to the contrary². To that extent the position under the Copyright Act 1911 was the same as that which now subsists under the Copyright, Designs and Patents Act 1988³.

1 For these purposes, 'employee' meant a person employed under a contract of service or apprenticeship: Copyright Act 1911 s 5(1)(b) (repealed).

2 Ibid s 5(1) proviso (b) (repealed). This did not apply to Crown copyright: see s 18 (repealed). As to Crown copyright see PARA 144 et seq post.

3 As to first ownership under the Copyright, Designs and Patents Act 1988 see PARA 118 ante; and as to works made under a contract of service or apprenticeship see PARA 120 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/C. WORKS MADE ON OR AFTER 1 JULY 1912 AND BEFORE 1 JUNE 1957/132. Works made by journalist employees.

132. Works made by journalist employees.

Where an article or other contribution to a newspaper, magazine or similar periodical was made by an employee¹ in the course of his employment, his employer was the first owner of any copyright in the work²; but, in the absence of any agreement to the contrary, there was deemed to be reserved to the author³ a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine or similar periodical⁴.

1 For the meaning of 'employee' see PARA 131 note 1 ante.

2 Copyright Act 1911 s 5(1) proviso (b) (repealed). This did not apply to Crown copyright: see s 18 (repealed). As to Crown copyright see PARA 144 et seq post.

3 As to authorship see PARA 116 ante.

4 Copyright Act 1911 s 5(1) proviso (b) (repealed). It was held in *Sun Newspapers Ltd v Whippie* (1928) 28 SRNSW 473 that the journalist author had no right to publish but merely a right of veto. See also *Nicol v Barranger* (1921) MacG Cop Cas (1917-23) 219, CA.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/C. WORKS MADE ON OR AFTER 1 JULY 1912 AND BEFORE 1 JUNE 1957/133. Commissioned artistic works.

133. Commissioned artistic works.

Where, in the case of an engraving¹, photograph² or portrait³, the plate⁴ or other original was ordered by some other person for valuable consideration in pursuance of that order, the person by whom such plate or other original was ordered was the first owner of the copyright, subject to any agreement to the contrary⁵. To this extent the position under the Copyright Act 1911 was the same as that under the Copyright Act 1956⁶.

1 For these purposes, 'engraving' included etchings, lithographs, wood-cuts, prints and other similar works, not being photographs: Copyright Act 1911 s 35(1) (repealed).

2 For the meaning of 'photograph' see PARA 116 note 5 ante.

3 As to what constitutes a portrait see PARA 126 note 2 ante.

4 For these purposes, 'plate' included any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing any copies of a work: Copyright Act 1911 s 35(1) (repealed).

5 Ibid s 5(1) proviso (a) (repealed).

6 See PARA 126 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/C. WORKS MADE ON OR AFTER 1 JULY 1912 AND BEFORE 1 JUNE 1957/134. Joint owners.

134. Joint owners.

The position relating to joint owners under the Copyright Act 1911 was the same as that which now subsists under the Copyright, Designs and Patents Act 1988¹.

¹ See PARA 121 ante.

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D. WORKS MADE BEFORE 1 JULY 1912

135. In general.

Works made before 1 July 1912 were protected by a series of enactments¹. Works of architecture and works of artistic craftsmanship were not protected prior to the enactment of the Copyright Act 1911. Except in special cases², the author³ was the first owner of the copyright⁴.

1 See the Engraving Copyright Act 1734; the Engraving Copyright Act 1766; the Prints Copyright Act 1777; the International Copyright Act 1852 (engravings and prints); the Sculpture Copyright Act 1814 (sculptures); the Dramatic Copyright Act 1833 (performing right in dramatic works); the Copyright Act 1842 (literary, dramatic and musical works); the Fine Arts Copyright Act 1862 (drawings, paintings and photographs) (all repealed). See also PARAS 17-27 ante.

2 See PARAS 136-139 post.

3 As to who was the author under the legislation before the Copyright Act 1911 see PARA 117 ante.

4 As to the circumstances in which copyright could be lost see PARA 26 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/D. WORKS MADE BEFORE 1 JULY 1912/136. Engravings.

136. Engravings.

The actual engraver as author was the first owner of the copyright in an engraving¹, except where a person from his own work, invention or design caused or procured an engraving to be made, in which case that person was the first owner². Subsistence of copyright was dependent on the name of the owner and the date being placed on the engraving before publication³.

1 Engravings were first protected under the Engraving Copyright Act 1734 (repealed) and later under the Engraving Copyright Act 1766 (repealed). For the meaning of 'engraving' see the Engraving Copyright Act 1734 s 1 (repealed).

2 Ibid s 1 (repealed). See also *Stannard v Harrison* (1871) 19 WR 811.

3 Engraving Copyright Act 1734 s 1 (repealed). See also *Rock v Lazarus* (1872) LR 15 Eq 104.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/D. WORKS MADE BEFORE 1 JULY 1912/137. Sculptures.

137. Sculptures.

The owner of the copyright in a work of sculpture¹ was the actual sculptor or the person who caused² the sculpture to be made³. Subsistence was dependent on the name of the proprietor of the copyright being placed on the sculpture together with the date of publication prior to its being put forth or published⁴.

1 Sculptures were protected under the Sculpture Copyright Act 1814 (repealed). For the meaning of 'sculpture' see s 1 (repealed).

2 There was no authority as to the meaning of 'caused'.

3 Sculpture Copyright Act 1814 s 1 (repealed).

4 Ibid s 1 (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/D. WORKS MADE BEFORE 1 JULY 1912/138. Drawings, paintings and photographs.

138. Drawings, paintings and photographs.

The author of a drawing, painting or photograph¹ was the first owner of the copyright in it, except that this did not apply where the work was made or executed for another person for good or valuable consideration², unless there was an agreement in writing signed by that other person expressly reserving the copyright to the author³.

1 These works were protected by the Fine Arts Copyright Act 1862 (repealed). As to the circumstances in which copyright could be lost see note 2 *infra*; and PARA 26 *ante*.

2 It was provided that, if the negative of any photograph was made for or on behalf of any other person for good or valuable consideration, the person making the same should not retain the copyright thereof, unless it was expressly reserved by agreement in writing signed by the person on whose behalf it was made, but that the copyright should belong to such last-mentioned person: see *ibid* s 1 (repealed). Under s 1 (repealed) it was held that, where a photographer solicited a person to have a photograph taken free of charge, the copyright belonged to the photographer, notwithstanding that the person afterwards ordered copies to be made by the photographer and paid for them (*Boucas v Cooke* [1903] 2 KB 227 at 236, CA, per Collins MR; *Melville v Mirror of Life Co* [1895] 2 Ch 531); and that mere permission to take the photograph was not a valuable consideration (*Ellis v Horace Marshall & Son* (1895) 64 LJQB 757; but see *Stackemann v Paton* [1906] 1 Ch 774; *Davis v Baird* (1904) 38 ILT 23).

3 Fine Arts Copyright Act 1862 s 1 (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/D. WORKS MADE BEFORE 1 JULY 1912/139. Compilations.

139. Compilations.

Where any person projected, conducted or carried on or was the proprietor of a review, magazine or periodical work and he employed¹ a person to compose the same or any volumes, parts, essays, articles or portions thereof for publication as part of the work on terms² that the copyright was to belong to him, he was entitled to the copyright in the whole and also in the contribution so composed and paid for³. However, the proprietor could not publish the volume, parts, essays, articles or portions thereof in separate form without the consent of the author⁴, and, in respect of items first published in such works, the right to publish his work in separate form ultimately reverted to the author⁵.

1 He under either a contract of service or a contract for services: *Lamb v Evans* [1893] 1 Ch 218, CA; *Lawrence and Bullen Ltd v Aflalo* [1904] AC 17, HL.

2 It was enough if it could fairly be implied from the circumstances that the work was composed on those terms: *Sweet v Benning* (1855) 16 CB 459.

3 Copyright Act 1842 s 18 (repealed).

4 Ibid s 18 (repealed). The meaning of 'publication in separate form' was considered but not decided in *Lawrence and Bullen Ltd v Aflalo* [1904] AC 17, HL.

5 Copyright Act 1842 s 18 (repealed).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(3) AUTHORSHIP AND OWNERSHIP/(iii) Ownership/E. EXTENDED AND REVIVED COPYRIGHT/140. Ownership of extended copyright.

E. EXTENDED AND REVIVED COPYRIGHT

140. Ownership of extended copyright.

The person who is the owner of the copyright in a work¹ immediately before 1 January 1996² is as from that date the owner of any extended copyright³ in the work⁴, provided that, if he is entitled to copyright for a period of less than the whole of the copyright period⁵, any extended copyright is part of the reversionary interest⁶ expectant on the termination of that period⁷. The person who is the owner of the copyright in a sound recording⁸ immediately before 31 October 2003⁹ is as from that date the owner of any extended copyright¹⁰ in that sound recording¹¹.

1 As to who is the owner of the copyright in a work made before 1 January 1996 see PARA 118 et seq ante.

2 I.e. the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).

3 For the meaning of 'extended copyright' see PARA 93 note 17 ante.

4 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 18(1).

5 I.e. the period under the provisions of the Copyright, Designs and Patents Act 1988 as they stood immediately before the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force (see the text and note 2 supra). As to the duration of copyright under the Copyright, Designs and Patents Act 1988 (as originally enacted) see PARAS 101-106 ante.

6 This situation can arise either because the copyright work was assigned for a period shorter than its full duration or because of the operation of *ibid* s 170, Sch 1 para 27(1) (see PARA 173 post). As to assignment see PARA 160 et seq post.

7 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 18(2).

8 For the meaning of 'sound recording' see PARA 84 ante.

9 I.e. the date on which the Copyright and Related Rights Regulations 2003, SI 2003/2498, came into force: see reg 1.

10 'Extended copyright' means any copyright in sound recordings which subsists by virtue of the Copyright, Designs and Patents Act 1988 s 13A (as added) as amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 29 after the date on which it would have expired under the provisions of the Copyright, Designs and Patents Act 1988 as they stood immediately before 31 October 2003: Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 30(1). As to the duration of copyright in sound recordings see PARA 97 ante.

11 *Ibid* reg 36.

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141. Ownership of revived copyright.

Subject to certain exceptions¹, the person who was the owner of the copyright in a work² immediately before it expired³ (the 'former copyright owner') is on and after 1 January 1996⁴ the owner of any revived copyright⁵ in the work⁶. If, however, the former copyright owner has died before that date, or in the case of a legal person has ceased to exist before that date, the revived copyright vests:

- 98 (1) in the case of a film⁷, in the principal director of the film or his personal representatives⁸; and
- 99 (2) in any other case, in the author⁹ of the work or his personal representatives¹⁰.

Where revived copyright so vests¹¹ in personal representatives, it must be held by them for the benefit of the person who would have been entitled to it had it been vested in the principal director or author immediately before his death and had devolved as part of his estate¹².

1 Ie the exceptions specified in the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 19(2), (3): see the text and notes 7-12 infra.

2 As to who is the owner of the copyright in a work made before 1 January 1996 see PARA 118 et seq ante.

3 Ie under the provisions of the Copyright, Designs and Patents Act 1988 as they stood immediately before the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force (see the text and note 4 infra): reg 12(2). As to the duration of copyright under the Copyright, Designs and Patents Act 1988 (as originally enacted) see PARA 101 et seq ante.

4 Ie the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).

5 For the meaning of 'revived copyright' see PARA 93 note 18 post.

6 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 19(1).

7 For the meaning of 'film' see PARA 86 ante.

8 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 19(2)(a).

9 As to who is the author of a work see PARA 110 et seq ante. For these purposes, the authorship of a photograph made before 1 August 1989 is to be determined in accordance with the Copyright, Designs and Patents Act 1988 s 9 (as amended) (see PARA 110 ante) and not s 170, Sch 1 para 10 (see PARA 109 ante): Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 19(b).

10 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 19(2)(b).

11 Ie by virtue of *ibid* reg 19(2)(a), (b): see the text to notes 7-10 supra.

12 *Ibid* reg 19(3). As to devolution of copyright on death see PARA 172 post.

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142. New rights; effect of copying authorisation before 1 December 1996.

The Copyright and Related Rights Regulations 1996¹ extended the scope of the distribution right² and conferred new rental and lending rights³. Where before 1 December 1996⁴ the owner⁵ or prospective owner⁶ of copyright in a literary⁷, dramatic⁸, musical⁹ or artistic¹⁰ work had authorised a person to make a copy of the work, those new rights in relation to that copy vested on 1 December 1996 in the person so authorised, subject to any agreement to the contrary¹¹.

1 le the Copyright and Related Rights Regulations 1996, SI 1996/2967 (as amended).

2 As to the distribution right see PARA 322 post.

3 As to rental and lending rights see PARA 323 post.

4 le the date on which the Copyright and Related Rights Regulations 1996, SI 1996/2967, came into force: see reg 1(2).

5 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

6 For the meaning of 'prospective owner' see PARA 162 post.

7 For the meaning of 'literary work' see PARA 67 ante.

8 For the meaning of 'dramatic work' see PARA 73 ante.

9 For the meaning of 'musical work' see PARA 73 ante.

10 For the meaning of 'artistic work' see PARA 75 ante.

11 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 31(a).

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143. Entitlement to 'Peter Pan' royalty.

Under the legislation then in force¹ the copyright in the play 'Peter Pan' by Sir James Matthew Barrie ('the work') expired on 31 December 1987². Nevertheless the trustees³ of the Hospital for Sick Children, Great Ormond Street, London ('the Hospital') are entitled⁴ to a royalty in respect of any public performance⁵, commercial publication⁶ or communication to the public⁷ of the whole or any substantial part of the work or an adaptation⁸ of it⁹. Where the trustees are or would be entitled to a royalty, another form of remuneration may, however, be agreed¹⁰. The sums so received by the trustees, after deduction of any relevant expenses, must be held by them on trust for the purposes of the Hospital¹¹. The right of the trustees to receive such royalties may not be assigned and ceases if the trustees purport to assign or charge it¹². In default of agreement, application may be made to the Copyright Tribunal¹³ which must consider the matter and make such order regarding the royalty or other remuneration to be paid as it may determine to be reasonable in the circumstances¹⁴.

The copyright in 'Peter Pan' was revived¹⁵ and will expire on 31 December 2007. The revived copyright¹⁶ is vested in the trustees¹⁷, and is subject to licences of right in the same way as any other revived copyright¹⁸, that is to say all the acts restricted by the copyright in the work¹⁹ are treated as licensed by the copyright owner subject to the payment of a reasonable royalty or other remuneration as may be agreed or, in default of agreement, determined by the Copyright Tribunal²⁰. However, no royalty or other remuneration is payable²¹ in respect of anything for which a royalty or other remuneration is payable in respect of any of the acts of exploitation²² mentioned above²³.

1 Ie the Copyright Act 1956 (repealed).

2 See the Copyright, Designs and Patents Act 1988 s 301. The provisions of s 301 and Sch 6 (as amended) (see the text and notes 3-14 *infra*) came into force on 15 November 1988: s 305(1).

3 'The trustees' means the special trustees appointed for the Hospital for Sick Children, Great Ormond Street, London under the National Health Service Act 1977 (see HEALTH SERVICES vol 54 (2008) PARA 66): Copyright, Designs and Patents Act 1988 Sch 6 para 1(1).

4 Ie subject to the provisions of *ibid* Sch 6 paras 3-7 (as amended): see the text and notes 9, 11-14 *infra*.

5 For the meaning of 'public performance' see PARAS 324-325 *post*.

6 For the meaning of 'commercial publication' see PARA 63 *ante*.

7 For the meaning of 'communication to the public' see PARA 326 *post*.

8 For the meaning of 'adaptation' see PARA 327 *ante*.

9 Copyright, Designs and Patents Act 1988 Sch 6 para 2(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 6(2)(f)). No royalty is payable in respect of: (1) anything which, immediately before copyright in the work expired on 31 December 1987, could lawfully have been done without the licence, or further licence, of the trustees as copyright owners (Copyright, Designs and Patents Act 1988 Sch 6 para 3(a)); or (2) anything which, if copyright still subsisted in the work, could, by virtue of any provision of Pt I Ch III (ss 28-76) (as amended) (acts permitted notwithstanding copyright: see PARA 337 *et seq post*), be done without infringing copyright (Sch 6 para 3(b)). Nor is any royalty payable in respect of anything done in pursuance of arrangements made before 15 November 1988 (being the date of the passing of the Copyright, Designs and Patents Act 1988): Sch 6 para 4.

10 *Ibid* Sch 6 para 2(2).

11 Ibid Sch 6 para 6.

12 Ibid Sch 6 para 7(1). The right may not be the subject of an order under the National Health Service Act 1977 s 92 (as amended) (transfers of trust property by order of the Secretary of State: see HEALTH SERVICES vol 54 (2008) PARA 67) and ceases if the Hospital ceases to have a separate identity or ceases to have purposes which include the care of sick children: Copyright, Designs and Patents Act 1988 Sch 6 para 7(2). Any power of Her Majesty, the court (within the meaning of the Charities Act 1993: see CHARITIES vol 8 (2010) PARA 175) or any other person to alter the trusts of a charity is not exercisable in relation to the trust created by the Copyright, Designs and Patents Act 1988 Sch 6 (as amended): Sch 6 para 7(3) (amended by the Charities Act 1993 s 98(1), Sch 6 para 30).

13 As to the Copyright Tribunal see PARA 207 post.

14 Copyright, Designs and Patents Act 1988 Sch 6 para 5(1). As to the application to settle the royalty see PARA 299 et seq post.

15 Ie pursuant to the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 16(d): see PARA 93 ante.

16 For the meaning of 'revived copyright' see PARA 93 note 18 ante.

17 See the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 19(1).

18 As to such licences see PARA 191 post.

19 As to the acts restricted by the copyright in a dramatic work see PARA 311 et seq post.

20 See the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 24(1). As to the application to determine such royalty or other remuneration see PARA 299 et seq post.

21 Ie by virtue of ibid reg 24(1): see the text to notes 15-20 supra.

22 Ie any of the acts for which a royalty or other remuneration is payable under the Copyright, Designs and Patents Act 1988 Sch 6 (as amended): see the text and notes 3-14 supra.

23 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 24(6).

UPDATE

143 Entitlement to 'Peter Pan' royalty

NOTE 3--Definition of 'the trustees' in 1988 Act Sch 6 para 1(1) amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 114(a).

NOTE 12--1988 Act Sch 6 para 7(2) amended: 2006 Act Sch 1 para 114(b).

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(4) CROWN AND PARLIAMENTARY COPYRIGHT

(i) Crown Copyright

A. SUBSISTENCE OF COPYRIGHT

144. Works made on or after 1 August 1989.

Save, or to the extent that, Parliamentary copyright subsists in a work¹, where a work is made² by Her Majesty³ or by an officer or servant of the Crown⁴ in the course of his duties⁵, the work qualifies for copyright⁶ protection notwithstanding the ordinary requirement⁷ as to qualification for copyright protection⁸, and Her Majesty is the first owner of any copyright in the work⁹. Copyright in such a work is referred to as 'Crown copyright', notwithstanding that it may be, or have been, assigned to another person¹⁰.

Except as mentioned above, and subject to any express exclusion elsewhere¹¹, the provisions relating to copyright¹² apply in relation to Crown copyright as to other copyright¹³.

In the case of a work of joint authorship¹⁴ where one or more, but not all, of the authors¹⁵ are persons falling within these provisions¹⁶, the provisions apply only in relation to those authors and the copyright subsisting by virtue of their contribution to the work¹⁷.

The Re-use of Public Sector Information Regulations 2005¹⁸ implement the European Directive¹⁹ on the re-use of public sector information, and seek to facilitate the re-use of documents held by public sector bodies. The regulations do not affect the subsistence of Crown copyright or other copyright in documents affected.

1 Copyright, Designs and Patents Act 1988 s 163(6) (amended by the Scotland Act 1998 s 125, Sch 8 para 25(4); and the Northern Ireland Act 1998 s 99, Sch 13 para 8(1), (4)). As to Parliamentary copyright see PARA 150 et seq post.

2 For these purposes, works made by Her Majesty include any sound recording, film or live broadcast of the proceedings of the National Assembly for Wales (including proceedings of a committee of the Assembly or of a sub-committee of such a committee) which is made by or under the direction or control of the Assembly; but a work is not to be regarded as made by or under the direction or control of the Assembly by reason only of its being commissioned by or on behalf of the Assembly: Copyright, Designs and Patents Act 1988 s 163(1A) (added by the Government of Wales Act 1998 s 125, Sch 12 para 28; and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 11(a)). For the meaning of 'sound recording' see PARA 84 ante; for the meaning of 'film' see PARA 86 ante; and for the meaning of 'broadcast' see PARA 89 ante. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Although the Prince of Wales may be deputising for the Queen on an official duty he is not to be regarded as 'Her Majesty' for these purposes: *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch), [2006] All ER (D) 276 (Mar).

4 For the meaning of 'the Crown' see PARA 5 note 2 ante. The Prince of Wales is not an official or servant of the Crown for these purposes and the fact that some or all of his overseas tours are at taxpayers' expense does not make him an official or servant of the Crown for the duration of the tour in question: *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch), [2006] All ER (D) 276 (Mar).

5 Journals written by the Prince of Wales in his own time and for his own purposes whilst on an official overseas tour were not made by him 'in the course of his duties': *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch), [2006] All ER (D) 276 (Mar).

6 For the meaning of 'copyright' see PARA 57 ante.

7 Ie notwithstanding the Copyright, Designs and Patents Act 1988 s 153(1): see PARA 59 ante.

8 Ibid s 163(1)(a). As to Her Majesty's entitlement to copyright in Acts of Parliament and Measures see PARA 148 post.

9 Ibid s 163(1)(b).

10 Ibid s 163(2). As to assignment of copyright see PARA 160 et seq post.

11 Ie elsewhere in ibid Pt I (ss 1-179) (as amended): see s 11(3) (first ownership of copyright: see PARA 118 ante), s 12(5) (as originally enacted) (duration of copyright in literary, dramatic, musical or artistic works made on or after 1 August 1989 and before 1 January 1996: see PARA 102 ante), s 12(9) (as substituted) (duration of copyright in literary, dramatic, musical or artistic works made on or after 1 January 1996: see PARA 96 ante), s 57(2) (anonymous or pseudonymous works: see PARA 384 post), s 66A(2) (as added) (acts permitted in respect of films on assumptions as to expiry of copyright etc: see PARA 394 post), s 79(7) (right to be identified as author or director: see PARA 461 post), s 82(1)(b) (right to object to derogatory treatment of work: see PARA 469 post), and s 153(2) (qualification for copyright protection: see PARA 59 ante).

12 Ie ibid Pt I (ss 1-179) (as amended).

13 Ibid s 163(5). As to the presumptions relevant to works subject to Crown copyright see PARA 433 post.

14 For the meaning of 'work of joint authorship' see PARA 113 ante.

15 For the meaning of 'author' see PARA 110 ante.

16 Ie persons falling within the Copyright, Designs and Patents Act 1988 s 163(1): see the text to notes 1-9 supra.

17 Ibid s 163(4).

18 Ie the Re-use of Public Sector Information Regulations 2005, SI 2005/1515: see CONFIDENCE AND DATA PROTECTION.

19 Ie EC Parliament and Council Directive 2003/98 (OJ L 345, 31.12.2003, p 90).

UPDATE

144 Works made on or after 1 August 1989

NOTE 2--1988 Act s 163(1A) repealed: Government of Wales Act 2006 Sch 10 para 26.

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145. Works made before 1 August 1989.

The general provisions relating to Crown copyright¹ apply to a work made before 1 August 1989² if the provisions of the Copyright Act 1956 relating to Crown copyright³ applied to the work immediately before that date⁴ and the work is not one to which the provisions relating to copyright in Acts of Parliament, Measures and Bills and Parliamentary copyright⁵ apply⁶. Subject to any agreement entered into before 1 August 1989⁷, Her Majesty is the first owner⁸ of the Crown copyright⁹.

Under the Copyright Act 1956, every original¹⁰ literary¹¹, dramatic¹², musical¹³ or artistic¹⁴ work made by or under the direction or control of Her Majesty or a government department¹⁵ was protected under Crown copyright, even though, if not so made, it would not have been subject to copyright under that Act¹⁶. Further, Her Majesty was entitled to the copyright in every such work first published in the United Kingdom, or in another country to which the relevant statutory provision¹⁷ extended, if first published by or under the direction or control of Her Majesty or a government department¹⁸. Crown copyright subsisted in a sound recording or cinematograph film made by or under the direction or control of Her Majesty or a government department, even though it would not have been protected if not so made¹⁹. To ascertain whether copyright in a work still subsisted as at 1 August 1989 it is necessary to apply the provisions of the Copyright Act 1956 as to duration of copyright²⁰.

1 Ie the Copyright, Designs and Patents Act 1988 s 163 (as amended): see PARA 144 ante.

2 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

3 Ie the Copyright Act 1956 s 39 (repealed): see the text and notes 16-20 infra.

4 Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 40(1)(a).

5 Ie ibid s 164 (Crown copyright in Acts and Measures: see PARA 148 post), s 165 (Parliamentary copyright: see PARAS 150-151 post) or s 166 (copyright in Parliamentary Bills: see PARA 152 post).

6 Ibid Sch 1 para 40(1)(b).

7 Ie under the Copyright Act 1956 s 39(6) (repealed). Section 39(1)-(5) (repealed) (general provisions as to Crown copyright) had effect subject to any agreement made by or on behalf of Her Majesty or a government department with the author of the work, or the maker of the sound recording or cinematograph film, as the case might be, whereby it was agreed that the copyright in the work, recording or film should vest in the author or maker, or in another person designated in the agreement in that behalf: s 39(6) (repealed). For the meaning of 'sound recording' see PARA 37 note 7 ante; and for the meaning of 'cinematograph film' see PARA 37 note 8 ante.

8 Ie the Copyright, Designs and Patents Act 1988 s 163(1)(b) has effect: see PARA 144 ante.

9 Ibid Sch 1 para 40(2).

10 As to the meaning of 'originality' see PARA 65 ante.

11 For the meaning of 'literary work' see PARA 37 note 2 ante.

12 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

13 The expression 'musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 ante.

14 For the meaning of 'artistic work' see PARA 37 note 6 ante.

15 For these purposes, 'government department' meant any department of Her Majesty's government in the United Kingdom or of the government of Northern Ireland, or any department or agency or the government of any other country to which the Copyright Act 1956 s 39 (repealed) extended: s 39(9) (repealed). As to the extension of the provisions of the Copyright Act 1956 see PARA 52 ante. For the meaning of 'United Kingdom' see PARA 3 note 1 ante. A work published by a company working under licence from the Crown is not published under the direction or control of Her Majesty: *British Broadcasting Corp'n v Wireless League Gazette Publishing Co* [1926] Ch 433.

16 See the Copyright Act 1956 s 39(1) (repealed). As to prerogative rights see PARA 5 ante.

17 See *ibid* s 2 (repealed) (literary, dramatic and musical works) or, as the case may be, s 3 (repealed) (artistic works); and PARAS 40-41 ante.

18 See *ibid* s 39(2) (repealed). See also *Ironside v A-G* [1988] RPC 197.

19 See the Copyright Act 1956 s 39(5) (repealed).

20 Crown copyright in an unpublished literary, dramatic or musical work continued to subsist so long as the work remained unpublished: *ibid* s 39(3)(a) (repealed). Crown copyright in a published literary, dramatic or musical work subsisted until the end of the period of 50 years from the end of the calendar year in which the work was first published: s 39(3)(b) (repealed). Crown copyright in an artistic work continued to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made, except that, where the work in question was an engraving or photograph, other than a photograph taken before 1 June 1957 (ie the date on which the Copyright Act 1956 (repealed) came into force in the United Kingdom: see PARA 35 ante), the copyright continued to subsist until the end of the period of 50 years from the end of the calendar year in which the engraving or photograph was first published: see ss 39(4), 50(1), Sch 7 para 30 (repealed). For the meanings of 'photograph' and 'engraving' see PARA 37 note 6 ante.

Crown copyright in sound recordings made on or after 1 June 1957 subsisted until the end of the period of 50 years from the end of the calendar year in which the recording was first published (see s 12(3) (repealed)); and Crown copyright in sound recordings made before 1 June 1957 subsisted until the end of the period of 50 years from the end of the calendar year in which the recording was made (see Sch 7 para 31(1) (repealed)).

Crown copyright in cinematograph films made on or after 1 June 1957 subsisted in the case of any film which had been registered under the Films Act 1960 Pt II (ss 8-23) (repealed) or the Cinematograph Films Act 1938 Pt III (ss 22-33) (repealed) until the end of the period of 50 years from the end of the calendar year in which the film had been registered (see the Copyright Act 1956 s 13(3)(a) (as substituted and repealed)); and in the case of any other film, where it was unpublished, Crown copyright subsisted as long as the film remained unpublished and, where the film had been published, Crown copyright subsisted for the period of 50 years from the end of the calendar year in which the film was first published (see s 13(3)(b) (as amended and repealed)). Crown copyright in cinematograph films made before 1 June 1957 was treated as Crown copyright in an original dramatic work and in a collection of photographs: see Sch 7 para 31(2) (repealed).

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B. DURATION OF COPYRIGHT

146. Works made on or after 1 August 1989.

Crown copyright¹ in a literary², dramatic³, musical⁴ or artistic⁵ work continues to subsist until the end of the period of 125 years from the end of the calendar year in which the work was made⁶ or, if the work is published commercially⁷ before the end of the period of 75 years from the end of the calendar year in which it was made, until the end of the period of 50 years from the end of the calendar year in which it was first so published⁸.

1 For the meaning of 'Crown copyright' see PARA 144 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 Copyright, Designs and Patents Act 1988 s 163(3)(a).

7 For the meaning of 'published commercially' see PARA 63 ante.

8 Copyright, Designs and Patents Act 1988 s 163(3)(b).

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147. Works made before 1 August 1989.

The following provisions have effect with respect to the duration of Crown copyright¹ in works made before 1 August 1989².

Copyright in the following descriptions of work continues to subsist until the date on which it would have expired in accordance with the Copyright Act 1956:

- 100 (1) published³ literary⁴, dramatic⁵ or musical⁶ works⁷;
- 101 (2) artistic works⁸ other than engravings or photographs⁹;
- 102 (3) published engravings¹⁰;
- 103 (4) published photographs and photographs taken before 1 June 1957¹¹;
- 104 (5) published sound recordings¹² and sound recordings made before 1 June 1957¹³;
- 105 (6) published films and films¹⁴ registered under former enactments relating to the registration of films¹⁵.

Crown copyright in unpublished literary, dramatic or musical works continues to subsist until the date on which copyright would expire¹⁶ had the work been made on or after 1 August 1989¹⁷ or until 31 December 2039¹⁸, whichever is the later¹⁹.

Crown copyright in unpublished engravings²⁰ and unpublished photographs taken on or after 1 June 1957²¹ continues to subsist until 31 December 2039²².

1 For the meaning of 'Crown copyright' see PARA 144 ante.

2 Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 41(1). The question which provision applies to a work is to be determined by reference to the facts immediately before 1 August 1989 (ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante); and expressions used in Sch 1 para 41 which were defined for the purposes of the Copyright Act 1956 (repealed) have the same meaning as in that Act: Copyright, Designs and Patents Act 1988 Sch 1 para 41(1).

3 For the meaning of 'published' see PARA 39 ante.

4 For the meaning of 'literary work' see PARA 37 note 2 ante.

5 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

6 The expression 'musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 ante.

7 Ibid Sch 1 para 41(2)(a). The period is until the end of the period of 50 years from the end of the calendar year in which the work was made: see the Copyright Act 1956 s 39(3) (repealed); and PARA 145 note 20 ante.

8 For the meaning of 'artistic work' see PARA 37 note 6 ante.

9 Copyright, Designs and Patents Act 1988 Sch 1 para 41(2)(b). The period is until the end of the period of 50 years from the end of the calendar year in which the work was made: see the Copyright Act 1956 s 39(4) (repealed); and PARA 145 note 20 ante. For the meanings of 'photograph' and 'engraving' see PARA 37 note 6 ante.

10 Copyright, Designs and Patents Act 1988 Sch 1 para 41(2)(c). The period is until the end of the period of 50 years from the end of the calendar year in which the engraving was first published: see the Copyright Act 1956 s 39(4) (repealed); and PARA 145 note 20 ante.

11 Copyright, Designs and Patents Act 1988 Sch 1 para 41(2)(d). The period is, in the case of published photographs, until the end of the period of 50 years from the end of the calendar year in which the photograph was first published (see the Copyright Act 1956 s 39(4) (repealed); and PARA 145 note 20 ante); and, in the case of photographs taken before 1 June 1957, until the end of the period of 50 years from the end of the calendar year in which the photograph was made (see s 50(1), Sch 7 para 30 (repealed); and PARA 145 note 20 ante).

12 For the meaning of 'sound recording' see PARA 37 note 7 ante.

13 Copyright, Designs and Patents Act 1988 Sch 1 para 41(2)(e). The period is, in the case of published sound recordings made on or after 1 June 1957, until the end of the period of 50 years from the end of the calendar year in which the sound recording was first published (see the Copyright Act 1956 ss 12(3), 39(5)(b) (repealed); and PARA 145 note 20 ante); and, in the case of sound recordings made before 1 June 1957, until the end of the period of 50 years from the end of the calendar year in which the recording was made (see Sch 7 para 31(1) (repealed); and PARA 145 note 20 ante).

Crown copyright in a sound recording not falling within head (5) in the text continues to subsist until 31 December 2039, unless the recording is published before the end of that period, in which case copyright expires 50 years from the end of the calendar year in which it is published: Copyright, Designs and Patents Act 1988 Sch 1 para 41(5).

14 Ie films falling within the Copyright Act 1956 s 13(3)(a) (repealed): see PARA 145 note 20 ante. For the meaning of 'film' see PARA 86 ante.

15 Copyright, Designs and Patents Act 1988 Sch 1 para 41(2)(f). For the meaning of 'former enactments relating to the registration of films' see PARA 51 note 6 ante. See also PARA 145 note 20 ante. As to the period of Crown copyright in cinematograph films see the Copyright Act 1956 s 13(3)(a) (as substituted; repealed), s 13(3)(b) (as amended; repealed); and PARA 145 note 20 ante. For the meaning of 'cinematograph film' see PARA 37 note 8 ante.

Crown copyright in a film not falling within head (6) in the text continues to subsist until 31 December 2039, unless the film is published before the end of that period, in which case copyright expires 50 years from the end of the calendar year in which it is published: Copyright, Designs and Patents Act 1988 Sch 1 para 41(5).

16 Ie the date on which copyright expires in accordance with *ibid* s 163(3): see PARA 146 ante.

17 *Ibid* Sch 1 para 41(3)(a).

18 *Ibid* Sch 1 para 41(3)(b). The period in this case is until the end of the period of 50 years from the end of the calendar year in which the Copyright, Designs and Patents Act 1988 came into force.

19 *Ibid* Sch 1 para 41(3).

20 *Ibid* Sch 1 para 41(4)(a).

21 *Ibid* Sch 1 para 41(4)(b).

22 *Ibid* Sch 1 para 41(4). The period in this case is until the end of the period of 50 years from the end of the calendar year in which the Copyright, Designs and Patents Act 1988 came into force.

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C. ENTITLEMENT TO CROWN COPYRIGHT

148. Copyright in Acts and Measures.

Her Majesty is entitled to copyright¹ in every Act of Parliament, Act of the Scottish Parliament, Act of the Northern Ireland Assembly or Measure of the General Synod of the Church of England². The copyright subsists from Royal Assent³ until the end of the period of 50 years from the end of the calendar year in which Royal Assent was given⁴.

References to Crown copyright⁵ include copyright in Acts of Parliament and Measures; and the provisions relating to copyright⁶ apply in relation to copyright in Acts of Parliament and Measures as to other Crown copyright⁷.

No other copyright, or right in the nature of copyright, subsists in an Act or Measure⁸.

1 For the meaning of 'copyright' see PARA 57 ante.

2 Copyright, Designs and Patents Act 1988 s 164(1) (amended by the Scotland Act 1998 s 125, Sch 8 para 25(5); and the Northern Ireland Act 1998 s 99, Sch 13 para 8(1), (5)). The Copyright, Designs and Patents Act 1988 s 164 (as amended) applies to Acts of Parliament and Measures of the General Synod of the Church of England passed before 1 August 1989 (s 170, Sch 1 para 42(1)); and references in s 164 (as amended) to Measures of the General Synod of the Church of England include Church Assembly Measures (Sch 1 para 42(2)). The date mentioned above is the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante. As to the Scottish Parliament and the Northern Ireland Assembly see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the General Synod of the Church of England see ECCLESIASTICAL LAW vol 14 PARA 390 et seq; and as to Measures of the General Synod of the Church of England see ECCLESIASTICAL LAW vol 14 PARA 399 et seq.

3 As to the Royal Assent see STATUTES vol 44(1) (Reissue) PARA 1278.

4 Copyright, Designs and Patents Act 1988 s 164(2).

5 *Ibid* Pt I (ss 1-179) (as amended), except s 163 (as amended) (see PARAS 144, 146 ante). For the meaning of 'Crown copyright' see PARA 144 ante.

6 *Ibid* Pt I (as amended).

7 *Ibid* s 164(3).

8 *Ibid* s 164(4).

UPDATE

148 Copyright in Acts and Measures

TEXT AND NOTES 1-4--Copyright also subsists for 50 years in Measures and Acts of the National Assembly for Wales: 1988 Act s 164(1), (2) (amended by the Government of Wales Act 2006 Sch 10 para 27).

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149. Control and management of Crown copyright.

Responsibility for control and administration of Crown copyright¹ rests with the Controller of Her Majesty's Stationery Office who is appointed by royal letters patent². Her Majesty's Stationery Office is now part of the Office of Public Sector Information³.

1 As to Crown copyright see PARA 144 ante.

2 As to letters patent see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 920.

3 The Office of Public Sector Information forms part of the Cabinet Office: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 430.

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(ii) Parliamentary Copyright

150. Parliamentary copyright.

Where a work is made by or under the direction or control of the House of Commons or the House of Lords, the work qualifies for copyright¹ protection notwithstanding the ordinary requirement² as to qualification for copyright protection³. Copyright in such a work is referred to as 'Parliamentary copyright', notwithstanding that it may be, or may have been, assigned to another person⁴.

The House by which, or under whose direction or control, the work is made is the first owner of any copyright in the work, and, if the work is made by or under the direction or control of both Houses, the two Houses are joint first owners of copyright⁵. Works made by or under the direction or control of the House of Commons or the House of Lords include:

- 106 (1) any work made by an officer or employee⁶ of that House in the course of his duties⁷; and
- 107 (2) any sound recording⁸, film⁹ or live broadcast¹⁰ of the proceedings of that House¹¹,

but a work is not to be regarded as made by or under the direction or control of either House by reason only of its being commissioned by or on behalf of that House¹².

In the case of a work of joint authorship¹³ where one or more but not all of the authors¹⁴ are acting on behalf of, or under the direction or control of, the House of Commons or the House of Lords, the above provisions apply only in relation to those authors and the copyright subsisting by virtue of their contribution to the work¹⁵.

Except as mentioned above, and subject to any express exclusion elsewhere¹⁶, the provisions relating to copyright¹⁷ apply in relation to Parliamentary copyright as to other copyright¹⁸.

The above provisions also apply, subject to any exceptions or modifications specified by Order in Council, to works made by or under the direction or control of any other legislative body of a country¹⁹ to which the provisions relating to copyright extend²⁰; and references to 'Parliamentary copyright' are to be construed accordingly²¹. A statutory instrument containing such an Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament²².

1 For the meaning of 'copyright' see PARA 57 ante.

2 Ie notwithstanding the Copyright, Designs and Patents Act 1988 s 153(1): see PARA 59 ante.

3 Ibid s 165(1)(a). Section 165 applies to unpublished literary, dramatic, musical or artistic works made before 1 August 1989, but does not otherwise apply to existing works: s 170, Sch 1 para 43(1). For the meaning of 'literary work' see PARA 67 ante; for the meanings of 'dramatic work' and 'musical work' see PARA 73 ante; for the meaning of 'artistic work' see PARA 75 ante; and for the meaning of 'existing work' see PARA 56 ante. The date mentioned above is the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante. As to copyright in Parliamentary Bills see PARA 152 post.

4 Ibid s 165(2). As to assignment of copyright see PARA 160 et seq post.

- 5 Ibid s 165(1)(b).
- 6 For the meaning of 'employee' see PARA 118 note 10 ante.
- 7 Copyright, Designs and Patents Act 1988 s 165(4)(a).
- 8 For the meaning of 'sound recording' see PARA 84 ante.
- 9 For the meaning of 'film' see PARA 86 ante.
- 10 For the meaning of 'broadcast' see PARA 89 ante.
- 11 Copyright, Designs and Patents Act 1988 s 165(4)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 11(b)).
- 12 Copyright, Designs and Patents Act 1988 s 165(4).
- 13 For the meaning of 'work of joint authorship' see PARA 113 ante.
- 14 For the meaning of 'author' see PARA 110 ante.
- 15 Copyright, Designs and Patents Act 1988 s 165(5).
- 16 Ie elsewhere in ibid Pt I (ss 1-179) (as amended): see s 11(3) (first ownership of copyright: see PARA 118 ante), s 12(5) (as originally enacted) (duration of copyright in literary, dramatic, musical or artistic works made on or after 1 August 1989 and before 1 January 1996: see PARA 102 ante), s 12(9) (as substituted) (duration of copyright in literary, dramatic, musical or artistic works made on or after 1 January 1996: see PARA 96 ante), s 79(7) (right to be identified as author or director: see PARA 461 post), s 82(1)(b) (right to object to derogatory treatment of work: see PARA 469 post), and s 153(2) (qualification for copyright protection: see PARA 59 ante).
- 17 Ie ibid Pt I (as amended).
- 18 Ibid s 165(6).
- 19 For the meaning of 'country' see PARA 59 note 4 ante.
- 20 As to the countries to which the Copyright, Designs and Patents Act 1988 Pt I (as amended) extends see PARA 443 et seq post.
- 21 Ibid s 165(7). The Parliamentary Copyright (Scottish Parliament) Order 1999, SI 1999/676, and the Parliamentary Copyright (Northern Ireland Assembly) Order 1999, SI 1999/3146, have been made. As to the Scottish Parliament and the Northern Ireland Assembly see CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- 22 Copyright, Designs and Patents Act 1988 s 165(8).

UPDATE

150 Parliamentary copyright

NOTE 21--See the Parliamentary Copyright (National Assembly for Wales) Order 2007, SI 2007/1116.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(4) CROWN AND PARLIAMENTARY COPYRIGHT/(ii) Parliamentary Copyright/151. Duration.

151. Duration.

Parliamentary copyright¹ in a literary², dramatic³, musical⁴ or artistic⁵ work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made⁶.

1 For the meaning of 'Parliamentary copyright' see PARA 150 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 Copyright, Designs and Patents Act 1988 s 165(3). Section 165 applies to unpublished literary, dramatic, musical or artistic works made before 1 August 1989, but does not otherwise apply to existing works: s 170, Sch 1 para 43(1). For the meaning of 'existing work' see PARA 56 ante. The date mentioned above is the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(4) CROWN AND PARLIAMENTARY COPYRIGHT/(ii) Parliamentary Copyright/152. Copyright in Parliamentary Bills.

152. Copyright in Parliamentary Bills.

Copyright¹ in every Bill introduced into Parliament belongs, in accordance with the following provisions, to one or both of the Houses of Parliament².

Copyright in a public Bill belongs in the first instance to the House into which the Bill is introduced, and, after the Bill has been carried to the second House, to both Houses jointly; and it subsists from the time when the text of the Bill is handed in to the House in which it is introduced³. Copyright in a private Bill belongs to both Houses jointly; and it subsists from the time when a copy of the Bill is first deposited in either House⁴. Copyright in a personal Bill belongs in the first instance to the House of Lords, and, after the Bill has been carried to the House of Commons, to both Houses jointly; and it subsists from the time when it is given a First Reading in the House of Lords⁵.

Such copyright ceases on Royal Assent⁶ or, if the Bill does not receive Royal Assent, on the withdrawal or rejection of the Bill or the end of the Session⁷, provided that copyright in a Bill continues to subsist notwithstanding its rejection in any Session by the House of Lords if it remains possible for it to be presented⁸ for Royal Assent in that Session⁹.

References to Parliamentary copyright¹⁰ include copyright under the above provisions; and, except as mentioned above, the provisions relating to copyright¹¹ apply in relation to copyright under the above provisions as to other Parliamentary copyright¹².

No other copyright, or right in the nature of copyright, subsists in a Bill after Parliamentary copyright has once subsisted under the above provisions; but this is without prejudice to the subsequent operation of the above provisions in relation to a Bill which, not having been passed in one Session, is reintroduced in a subsequent Session¹³.

1 As to Parliamentary copyright generally see PARA 150 ante.

2 Copyright, Designs and Patents Act 1988 s 166(1). Section 166 does not apply: (1) to a public Bill which was introduced into Parliament and published before 1 August 1989 (s 170, Sch 1 para 43(2)(a)); (2) to a private Bill of which a copy was deposited in either House before 1 August 1989 (Sch 1 para 43(2)(b)); or (3) to a personal Bill which was given a First Reading in the House of Lords before 1 August 1989 (Sch 1 para 43(2)(c)). The date mentioned above is the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante. As to the legislative process of Parliament and the classification of legislation see PARLIAMENT vol 34 (Reissue) PARA 728 et seq. See also STATUTES. As to copyright in Bills of the Scottish Parliament see s 166A (added by the Scotland Act 1998 s 125, Sch 8); and as to copyright in Bills of the Northern Ireland Assembly see the Copyright, Designs and Patents Act 1988 s 166B (added by the Northern Ireland Act 1998 s 99, Sch 13 para 8(1), (6)).

3 Copyright, Designs and Patents Act 1988 s 166(2).

4 Ibid s 166(3).

5 Ibid s 166(4).

6 Ibid s 166(5)(a).

7 Ibid s 166(5)(b).

8 Ie by virtue of the Parliament Acts 1911 and 1949: see PARLIAMENT vol 34 (Reissue) PARAS 831-832.

9 Copyright, Designs and Patents Act 1988 s 166(5).

- 10 le in ibid Pt I (ss 1-179) (as amended), except s 165 (as amended) (see PARAS 150-151 ante).
- 11 le ibid Pt I (as amended).
- 12 Ibid s 166(6).
- 13 Ibid s 166(7).

UPDATE

152 Copyright in Parliamentary Bills

NOTE 2--As to copyright in proposed Measures and Bills of the National Assembly for Wales see the 1988 Act ss 166C, 166D (added by the Government of Wales Act 2006 Sch 10 para 28).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(4) CROWN AND PARLIAMENTARY COPYRIGHT/(ii) Parliamentary Copyright/153. Ownership, dealing with and enforcement of Parliamentary copyright.

153. Ownership, dealing with and enforcement of Parliamentary copyright.

For the purposes of holding, dealing with and enforcing copyright¹, and in connection with all legal proceedings relating to copyright, each House of Parliament is treated as having the legal capacities of a body corporate, which is not affected by a prorogation or dissolution².

The functions of the House of Commons as owner of copyright are exercised by the Speaker on behalf of the House; and, if so authorised by the Speaker, or in case of a vacancy in the office of Speaker, those functions may be discharged by the Chairman of Ways and Means or a Deputy Chairman³. For this purpose, a person who on the dissolution of Parliament was Speaker of the House of Commons, Chairman of Ways and Means or a Deputy Chairman may continue to act until the corresponding appointment is made in the next Session of Parliament⁴.

The functions of the House of Lords as owner of copyright are exercised by the Clerk of the Parliaments on behalf of the House; and, if so authorised by him, or in case of a vacancy in the office of Clerk of the Parliaments, those functions may be discharged by the Clerk Assistant or the Reading Clerk⁵.

Legal proceedings relating to copyright are brought by or against the House of Commons in the name of 'The Speaker of the House of Commons' and are brought by or against the House of Lords in the name of 'The Clerk of the Parliaments'⁶.

1 As to Parliamentary copyright see PARA 150 ante.

2 Copyright, Designs and Patents Act 1988 s 167(1). As to bodies corporate see COMPANIES; CORPORATIONS. As to the prorogation or dissolution of Parliament see PARLIAMENT vol 78 (2010) PARA 1018 et seq.

3 Ibid s 167(2). As to the Speaker of the House of Commons see PARLIAMENT vol 78 (2010) PARA 931 et seq; and as to the Chairman of Ways and Means see PARLIAMENT vol 78 (2010) PARA 940.

4 Ibid s 167(3).

5 Ibid s 167(4). As to the Clerk of the Parliaments, the Clerk Assistant and the Reading Clerk see PARLIAMENT vol 78 (2010) PARAS 855-856.

6 Ibid s 167(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(4) CROWN AND PARLIAMENTARY COPYRIGHT/(ii) Parliamentary Copyright/154. Administration of Parliamentary copyright.

154. Administration of Parliamentary copyright.

The functions of the Houses of Parliament as copyright owners are exercised by the Speaker of the House of Commons and the Clerk of the Parliaments¹. However, the day to day administration of Parliamentary copyright material is undertaken by the Office of Public Sector Information under the terms of an agreement with Parliament².

¹ See the Copyright, Designs and Patents Act 1988 s 167; and PARA 153 ante.

² The Office of Public Sector Information forms part of the Cabinet Office: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 430.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(5) COPYRIGHT IN CERTAIN INTERNATIONAL ORGANISATIONS/155. Works made on or after 1 August 1989.

(5) COPYRIGHT IN CERTAIN INTERNATIONAL ORGANISATIONS

155. Works made on or after 1 August 1989.

Where an original¹ literary², dramatic³, musical⁴ or artistic⁵ work is made by an officer or employee⁶ of, or is published⁷ by, an international organisation⁸ and does not qualify for copyright⁹ protection by reference to the author¹⁰ or by reference to the country of first publication¹¹, copyright nevertheless subsists in the work and the organisation is first owner of that copyright¹².

Copyright of which an international organisation is first owner by virtue of these provisions continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made or such longer period as may be specified by Her Majesty by Order in Council for the purpose of complying with the international obligations of the United Kingdom¹³. An international organisation is deemed to have, and to have had at all material times, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright¹⁴.

1 As to the meaning of 'originality' see PARA 65 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 For the meaning of 'employee' see PARA 118 note 10 ante.

7 For the meaning of 'publish' see PARA 63 ante.

8 'International organisation' means an organisation the members of which include one or more states: Copyright, Designs and Patents Act 1988 s 178. The international organisations to which s 168 applies are those as to which Her Majesty has by Order in Council declared that it is expedient that s 168 should apply: s 168(2). A statutory instrument containing such an Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament: s 168(5). The Copyright (International Organisations) Order 1989, SI 1989/989, has been made designating the United Nations Organisation, its specialised agencies, and the Organisation of American States. In addition, by virtue of the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 4(1), (3), the Copyright (International Organisations) Order 1957, SI 1957/1524 (amended by SI 1958/1052) continues to have effect: see PARA 156 note 13 post.

9 For the meaning of 'copyright' see PARA 57 ante.

10 Ie under the Copyright, Designs and Patents Act 1988 s 154: see PARA 60 ante.

11 Ie under ibid s 155: see PARA 61 ante.

12 Ibid s 168(1). Any work in which immediately before 1 August 1989 copyright subsisted by virtue of the Copyright Act 1956 s 33 (repealed) (see PARA 156 post) is deemed to satisfy the requirements of the Copyright, Designs and Patents Act 1988 s 168(1): s 170, Sch 1 para 44(1). The date mentioned above is the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

13 Ibid s 168(3). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

14 Ibid s 168(4). As to bodies corporate see COMPANIES; CORPORATIONS.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(5) COPYRIGHT IN CERTAIN INTERNATIONAL ORGANISATIONS/156. Works made before 1 August 1989.

156. Works made before 1 August 1989.

Any work in which, immediately before 1 August 1989¹, copyright² subsisted by virtue of the provisions relating to international organisations³ under the Copyright Act 1956⁴ is deemed to satisfy the requirements of the Copyright, Designs and Patents Act 1988⁵ relating to the vesting of copyright in such organisations; but otherwise those requirements do not apply to works made or, as the case may be, published⁶ before that date⁷.

Under the Copyright Act 1956, certain organisations of which one or more sovereign states appeared to Her Majesty to be members might own the copyright in original⁸ literary⁹, dramatic¹⁰, musical¹¹ or artistic¹² works made by them, or made under their direction or control¹³. An unpublished work of such a description was protected until its publication¹⁴ if it was otherwise unprotected by copyright and was made in such circumstances that, if the author¹⁵ had been a British subject¹⁶ at the time when the work was made, copyright would have subsisted in it immediately after it was made and would thereupon have vested in the organisation¹⁷. A published work was protected, provided that copyright did not subsist in the work immediately after its first publication, if there was no agreement reserving the copyright, if any, to the author and if, had the work been published in the United Kingdom¹⁸, the organisation would have been entitled to the copyright¹⁹.

Copyright under the Copyright, Designs and Patents Act 1988 in any such work which is unpublished continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was first published²⁰ or 31 December 2039²¹, whichever is the earlier²².

1 le the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

2 For the meaning of 'copyright' see PARA 57 ante.

3 For the meaning of 'international organisation' see PARA 155 note 8 ante.

4 le by virtue of the Copyright Act 1956 s 33 (repealed): see the text and notes 8-19 infra.

5 le the requirements of the Copyright, Designs and Patents Act 1988 s 168(1): see PARA 155 ante.

6 For the meaning of 'publication' see PARA 63 ante.

7 Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 44(1).

8 As to the meaning of the meaning of 'originality' see PARA 65 ante.

9 For the meaning of 'literary work' see PARA 37 note 2 ante.

10 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

11 The expression 'musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 ante.

12 For the meaning of 'artistic work' see PARA 37 note 6 ante.

13 See the Copyright Act 1956 s 33(1), (2) (repealed). An Order in Council could be made declaring that the provisions of s 33 (repealed) applied to such an organisation: see s 33(1) (repealed). The Copyright (International Organisations) Order 1957, SI 1957/1524 (amended by SI 1958/1052) was made designating the United Nations Organisation, and its specialised agencies, the Organisation of American States, the Council of

Europe, the Organisation for European Economic Co-operation, the Baghdad Pact Organisation and the Western European Union: see the Copyright (International Organisations) Order 1957, SI 1957/1524, art 1, Schedule (amended by SI 1958/1052).

14 For the meaning of 'publication' see PARA 39 ante.

15 As to authorship see PARA 115 ante.

16 For the meaning of 'British subject' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 66 et seq.

17 See the Copyright Act 1956 s 33(2) (repealed). Section 33(2) (repealed) did not, however, apply to works first published before 1 June 1957: see s 50, Sch 7 para 27 (repealed).

18 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

19 See the Copyright Act 1956 s 33(3) (repealed). Section 33(3) (repealed) did not, however, apply to works first published before 1 June 1957: see Sch 7 para 27 (repealed).

20 Ie the date on which it would have expired in accordance with *ibid* s 33(3) (repealed).

21 Ie until the end of the period of 50 years from the end of the calendar year in which the Copyright, Designs and Patents Act 1988 s 168 (see PARA 155 ante) came into force.

22 *Ibid* Sch 1 para 44(2). Under the Copyright Act 1956 (repealed), copyright in unpublished works was perpetual and thus the copyright in such works will now expire on 31 December 2039.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(5) COPYRIGHT IN CERTAIN INTERNATIONAL ORGANISATIONS/157. Folklore etc; anonymous unpublished works.

157. Folklore etc; anonymous unpublished works.

Where, in the case of an unpublished¹ literary², dramatic³, musical⁴ or artistic⁵ work of unknown authorship⁶ there is evidence that the author⁷ (or, in the case of a joint work⁸, any of the authors) was a qualifying individual⁹ by connection with a country¹⁰ outside the United Kingdom¹¹, it is to be presumed, until the contrary is proved, that he was such a qualifying individual and that copyright accordingly subsists¹² in the work¹³.

If under the law of that country a body is appointed to protect and enforce copyright in such works, Her Majesty may by Order in Council designate that body for these purposes¹⁴. A body so designated must be recognised in the United Kingdom as having authority to do in place of the copyright owner¹⁵ anything, other than assign copyright, which it is empowered to do under the law of that country; and it may, in particular, bring proceedings in its own name¹⁶.

The above provisions do not apply if there has been an assignment¹⁷ of copyright in the work by the author of which notice has been given to the designated body; and nothing in the above provisions affects the validity of an assignment of copyright made, or licence granted¹⁸, by the author or a person lawfully claiming under him¹⁹.

1 For the meaning of 'publish' see PARA 63 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 For the meaning of 'unknown authorship' see PARA 114 ante.

7 For the meaning of 'author' see PARA 110 ante.

8 For the meaning of 'work of joint authorship' see PARA 113 ante.

9 A 'qualifying individual' means an individual who at the material time, within the meaning of the Copyright, Designs and Patents Act 1988 s 154 (see PARA 60 note 3 ante), was a person whose works qualified under s 154 (see PARA 60 ante) for copyright protection: s 169(5).

10 For the meaning of 'country' see PARA 59 note 4 ante.

11 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

12 In subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

13 Ibid s 169(1).

14 Ibid s 169(2). A statutory instrument containing such an Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament: s 169(4). At the date at which this volume states the law no such Order in Council had been made.

15 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

16 Copyright, Designs and Patents Act 1988 s 169(3).

17 As to assignment of copyright see PARA 160 et seq post.

- 18 As to licences see PARA 175 et seq post.
- 19 Copyright, Designs and Patents Act 1988 s 169(6).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(i) In general/158. Transmission of copyright and creation of interests therein.

(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS

(i) In general

158. Transmission of copyright and creation of interests therein.

Copyright¹ is transmissible by assignment², by testamentary disposition³, or by the operation of law⁴ as personal or movable property⁵. Other interests in copyright may also be created⁶.

Where, by virtue of any provision of the Copyright, Designs and Patents Act 1988, copyright subsists in a work, any document or event which had any operation affecting the ownership of copyright in any work made⁷ before 1 August 1989⁸, or creating, transferring or terminating an interest, right or licence in respect of the copyright in a work made before that date, has the corresponding operation in relation to the work under that Act⁹.

1 For the meaning of 'copyright' see PARA 57 ante.

2 As to assignment of copyright see PARA 160 et seq post.

3 As to transmission on death see PARA 172 post.

4 As to the reversioning of copyright see PARA 173 post; and as to transmission on bankruptcy see PARA 174 post.

5 Copyright, Designs and Patents Act 1988 s 90(1).

6 See PARA 175 et seq post.

7 A work of which the making extended over a period is taken to have been made when its making was completed: Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 1(3).

8 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

9 Ibid Sch 1 para 25(1). Expressions used in such a document are to be construed in accordance with their effect immediately before 1 August 1989: Sch 1 para 25(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(i) In general/159. Extended copyright; existing licences and agreements.

159. Extended copyright; existing licences and agreements.

Any copyright licence¹, any term or condition of an agreement relating to the exploitation of a copyright work, or any waiver or assertion of moral rights², which subsisted immediately before 1 January 1996³ in relation to a copyright work made before that date⁴ and is not to expire before the end of the copyright period⁵, continues to have effect during the period of any extended copyright⁶, subject to any agreement to the contrary⁷.

Any copyright licence, or term or condition relating to the exploitation of a copyright work, imposed by order of the Copyright Tribunal⁸, which subsisted immediately before 1 January 1996 in relation to any copyright work made before that date⁹ and is not to expire before the end of the copyright period¹⁰, continues to have effect during the period of any extended copyright, subject to any further order of the Tribunal¹¹.

1 For the meaning of 'copyright' see PARA 57 ante. As to licences of copyright see PARA 175 et seq post.

2 As to moral rights see PARA 455 et seq post; as to waiver of moral rights see PARA 482 post; and as to assertion of moral rights see PARA 459 post.

3 I.e. the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).

4 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 21(1)(a).

5 Ibid reg 21(1)(b). The copyright period is the period of copyright under the provisions of the Copyright, Designs and Patents Act 1988 (as originally enacted): see PARA 101 et seq ante.

6 For the meaning of 'extended copyright' see PARA 93 note 17 ante.

7 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 21(1).

8 As to the Copyright Tribunal see PARA 207 post.

9 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 21(2)(a).

10 Ibid reg 21(2)(b). As to the copyright period see note 5 supra.

11 Ibid reg 21(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(ii) Assignment/160. Form and evidence of assignment.

(ii) Assignment

160. Form and evidence of assignment.

An assignment of copyright¹ is not effective unless it is in writing² signed by or on behalf of the assignor³. Such an assignment does not require to be expressed in any particular form of words, and it may be contained in letters⁴; nor is there any requirement that it should specifically mention copyright⁵. Oral evidence may be admitted to identify the subject matter of an assignment⁶ and to establish the contents of a document⁷. A lost assignment in writing may be presumed from a course of dealings⁸.

No stamp duty is chargeable on an instrument for the sale, transfer or other disposition of copyright⁹.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'writing' see PARA 66 note 5 ante.

3 Copyright, Designs and Patents Act 1988 s 90(3). This is so whether the assignment is total or partial: see s 90(2); and PARA 161 post. The requirement in s 90(3) that an assignment be signed by or on behalf of the assignor is also satisfied in the case of a body corporate by the affixing of its seal: s 176(1). As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

4 *London Printing and Publishing Alliance Ltd v Cox* [1891] 3 Ch 291, CA (letter containing the words: 'for . . . copies . . . price £ . . . per . . . copies, which price includes sole and entire copyright nett' held to be an assignment); *Lacy v Toole* (1867) 15 LT 512 (agreement to 'let . . . have' a particular drama held to be an assignment of the performing right); *Ex p Hutchins* (1879) 4 QBD 483, CA (assignment of 'interest, property, benefit' of assignor in a work held to pass the performing right); *Re Jude's Musical Compositions* [1907] 1 Ch 651, CA (an assignment of the right to print and publish includes the right to multiply copies in any manner). However, in *British Actor Films Co v Glover* [1918] 1 KB 299, it was held that the assignee of the right to perform a work professionally in the provinces did not thereby acquire the right to produce a film of the work; and see *Landeker and Brown v Wolff & Co Ltd* (1907) 52 Sol Jo 45 (an assignment for the purpose of bringing an action, with a condition that the assignee will not reproduce the work without the consent of the assignor, is not a valid assignment so as to entitle the assignee to sue without joining the assignor). See also *Monty Python Pictures Ltd v Paragon Entertainment Corp* [1998] EMLR 640 (assignment terminated following breach of term in side letter).

5 *Murray v King* [1986] FSR 116 (sale of 'all the right, title and interest' of the vendor together with the goodwill in a business effective to transfer copyright). See also *Klep Valves (Pty) Ltd v Saunders Valve Co Ltd* 1987 (2) SA 1, SA CA.

6 *EW Savory Ltd v World of Golf Ltd* [1914] 2 Ch 566, CA ('our golfing subjects'); *Photocrom Co Ltd v H & W Nelson Ltd* (1927) MacG Cop Cas (1923-28) 293 ('negatives of various sizes in boxes in the negative room').

7 *Springsteen v Masquerade Music Ltd* [2001] EWCA Civ 563, [2001] EMLR 654, [2001] All ER (D) 101 (Apr). Where a party seeks to adduce secondary evidence of the contents of a document, it is a matter for the court to decide, in the light of all the circumstances of the case, what (if any) weight to attach to that evidence; and in evaluating the evidence the standard of proof is the balance of probabilities: *Springsteen v Masquerade Music Ltd* supra. As to the standard of proof on the balance of probabilities see CIVIL PROCEDURE vol 11 (2009) PARA 775.

8 *Dennison v Ashdown* (1897) 13 TLR 226; *Morris v Kelly* (1820) 1 Jac & W 481; but see *Latour v Bland* (1818) 2 Stark 382 (where it was pointed out that previous publication might have been by licence only).

9 See the Finance Act 2000 s 129(1); and STAMP DUTIES AND STAMP DUTY RESERVE TAX.

UPDATE

160 Form and evidence of assignment

NOTE 3--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1); see COMPANIES vol 14 (2009) PARA 283.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(ii) Assignment/161. Partial assignments.

161. Partial assignments.

An assignment or other transmission of copyright¹ may be partial, that is, limited so as to apply to one or more, but not all, of the things the copyright owner² has the exclusive right to do³ or to part, but not the whole, of the period⁴ for which the copyright is to subsist⁵.

Where, whether in consequence of a partial assignment or otherwise, different persons are entitled to different aspects of copyright in a work, the copyright owner for any purpose⁶ is the person who is entitled to the aspect of copyright relevant for that purpose⁷.

A partial assignee may sue for infringement without joining the assignor⁸.

1 For the meaning of 'copyright' see PARA 57 ante. As to assignments of copyright see PARA 160 ante.

2 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

3 Copyright, Designs and Patents Act 1988 s 90(2)(a). As to the exclusive rights granted to a copyright owner see PARA 311 et seq post. For example, the reproduction right may be assigned separately from the performing right and those rights may in turn be subdivided so that eg the right to publish in book form may be subdivided into hardback and paperback rights or into volume form and serial publication form. See also *British Actors Film Co v Glover* [1918] 1 KB 299 (a letting of the right of professionally performing a work in the provinces, reserving amateur rights, at a weekly rental and subject to determination or notice, held to be a partial assignment); *Lucas v Cooke* (1880) 13 ChD 872 (the words 'I assign to you for the purpose of producing an engraving of one size, the copyright in the picture . . .' held to be a licence or (possibly) an assignment of the right to make engravings of one size only).

4 As to duration of copyright see PARA 93 et seq ante.

5 Copyright, Designs and Patents Act 1988 s 90(2)(b).

6 Ie for any purpose of *ibid* Pt I (ss 1-179) (as amended).

7 *Ibid* s 173(1). As to future copyright see PARA 162 post.

8 *Jonathan Cape Ltd v Consolidated Press Ltd* [1954] 3 All ER 253, [1954] 1 WLR 1313.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(ii) Assignment/162. Future copyright.

162. Future copyright.

Where by an agreement made in relation to future copyright¹, and signed² by or on behalf of the prospective owner³ of the copyright, the prospective owner purports to assign⁴ the future copyright, wholly or partially, to another person, then, if on the copyright coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright vests in the assignee or his successor in title without further assurance⁵. In the case of an agreement made before 1 August 1989⁶, where the person who would otherwise be entitled has died before the copyright has come into existence, the right to it devolves as if it had subsisted immediately before death and he had then been its owner⁷.

'Future copyright' means copyright which will or may come into existence in respect of a future work or class of works or on the occurrence of a future event⁸; and 'prospective owner' is to be construed accordingly, and includes a person who is prospectively entitled to copyright by virtue of an agreement⁹ made in relation to future copyright¹⁰.

1 For the meaning of 'copyright' see PARA 57 ante.

2 The requirement in the Copyright, Designs and Patents Act 1988 s 91(1) that an assignment be signed by or on behalf of the assignor is also satisfied in the case of a body corporate by the affixing of its seal: s 176(1). As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

3 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 As to assignment of copyright see PARA 160 ante; and as to partial assignment see PARA 161 ante.

5 Copyright, Designs and Patents Act 1988 s 91(1). See also *Chaplin v Leslie Frewin (Publishers) Ltd* [1966] Ch 71, [1965] 3 All ER 764, CA. The Copyright, Designs and Patents Act 1988 s 91(1) does not apply to an agreement made before 1 June 1957: s 170, Sch 1 para 26(1). The court cannot decree specific performance of an agreement by an author to write a book: see *Clarke v Price* (1819) 2 Wils Ch 157; and SPECIFIC PERFORMANCE vol 44(1) (Reissue) para 807.

6 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

7 Ibid Sch 1 para 26(2). This preserves the operation of the Copyright Act 1956 s 37(2) (repealed).

8 Copyright, Designs and Patents Act 1988 s 91(2).

9 Ie an agreement such as is mentioned in ibid s 91(1): see the text to notes 1-5 supra.

10 Ibid s 91(2).

UPDATE

162 Future copyright

NOTE 2--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1): see COMPANIES vol 14 (2009) PARA 283.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(ii) Assignment/163. Prospective ownership of extended or revived copyright.

163. Prospective ownership of extended or revived copyright.

Where by an agreement made before 1 January 1996¹ in relation to extended² or revived³ copyright, and signed by or on behalf of the prospective owner⁴ of the copyright, the prospective owner purports to assign⁵ the extended or revived copyright, wholly or partially, to another person, then, if on that date the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright vests in the assignee or his successor in title without further assurance⁶.

A licence granted by a prospective owner⁷ of extended or revived copyright is binding on every successor in title to his interest, or prospective interest, in the right, except a purchaser in good faith for valuable consideration and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser⁸.

1 le the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).

2 For the meaning of 'extended copyright' see PARA 93 note 17 ante.

3 For the meaning of 'revived copyright' see PARA 93 note 18 ante.

4 le the person who on 1 January 1996 would have been entitled to the extended or revived copyright by virtue of the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 18 (see PARA 140 ante) or reg 19 (see PARA 141 ante).

5 As to assignment of copyright see PARA 160 ante; and as to partial assignment see PARA 161 ante.

6 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 20(1).

7 For these purposes, 'prospective owner' includes a person who is prospectively entitled to extended or revived copyright by virtue of such an agreement as is mentioned in *ibid* reg 20(1) (see the text to notes 1-6 *supra*): reg 20(3).

8 *Ibid* reg 20(2). References in the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended) to doing anything with, or without, the licence of the copyright owner are to be construed accordingly: Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 20(2). As to the doctrine of notice see EQUITY vol 16(2) (Reissue) para 576 *et seq*.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(ii) Assignment/164. Assignments involving a foreign element.

164. Assignments involving a foreign element.

The question what system of law governs the assignment of a chose or thing in action where there is a foreign element is considered elsewhere¹. Generally speaking, it is necessary to look to the law of the property right to determine whether it is assignable and, if so, under what conditions and to the law of the contract to determine the nature and extent of the rights transferred².

The English courts will not treat an assignment in a foreign country resulting from confiscatory legislation as effective as regards English rights³; and assignments of English rights by enemies may be subject to statutory restrictions⁴.

1 See CONFLICT OF LAWS. For a case where English rights in works of foreign origin were comprised in a general assignment executed by German nationals in Germany and the question of the validity of the assignment by German law was considered among other matters see *Novello & Co Ltd v Hinrichsen Edition Ltd* as reported in [1951] 1 All ER 779 at 787; affd on other grounds [1951] Ch 1026, [1951] 2 All ER 457, CA.

2 See *Campbell Connelly & Co Ltd v Noble* [1963] 1 All ER 237, [1963] 1 WLR 252 (whether an English assignment was effective to transfer American renewal rights); *Redwood Music Ltd v Francis, Day & Hunter Ltd* [1978] RPC 429 (whether an American agreement was effective to transfer English reversionary rights); and PARA 173 post.

3 *Novello & Co Ltd v Hinrichsen Edition Ltd* [1951] Ch 595, [1951] 1 All ER 779 (affd [1951] Ch 1026, [1951] 2 All ER 457, CA); *Peer International Corpn v Termidor Music Publishers Ltd (Editora Musical de Cuba, Pt 20 defendants)* [2003] EWCA Civ 1156, [2004] Ch 212; and see CONFLICT OF LAWS vol 8(3) (Reissue) paras 422-423.

4 *Novello & Co Ltd v Hinrichsen Edition Ltd* as reported in [1951] 1 All ER 779 at 788; affd [1951] Ch 1026, [1951] 2 All ER 457, CA. See also the Trading with the Enemy Act 1939 s 4(1); and PARA 32 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(ii) Assignment/165. Equitable assignments.

165. Equitable assignments.

An equitable assignment¹ may be created by agreement, express or implied². An agreement which contemplates that a further document of assignment is to be executed has been held to take effect as an equitable assignment³. It is not necessary that an equitable assignment be in writing⁴.

An equitable assignment, if it purports to assign the whole of the copyright, is not a partial assignment⁵ merely because it is equitable⁶.

1 As to equitable assignments of choses or things in action see CHOSSES IN ACTION vol 13 (2009) PARA 24 et seq. As to equitable ownership see PARA 122 ante.

2 *Grace v Newman* (1875) LR 19 Eq 623 (person paid for collecting material held to have assigned it in equity to employer); and see *Harold Drabble Ltd v Hycolite Manufacturing Co* (1928) 44 TLR 264. An agreement to assign copyright will not, however, readily be implied from a mere transfer of the article which is the subject of copyright. Thus in *Cooper v Stephens* [1895] 1 Ch 567, it was held that a sale of electro blocks to a customer authorised a limited user, but did not constitute an assignment; and, in *Nicol v Barranger* (1921) MacG Cop Cas (1917-23) 219, CA, it was held that a gift of sketches with the words 'you may do what you like with them yourself' did not constitute an assignment of copyright. See also *Knaplock and Tonson v Curle* (1722) 4 Vin Abr 278, pl 3; *Campbell Connelly & Co Ltd v Noble* [1963] 1 All ER 237, [1963] 1 WLR 252. As to infringement claims where there has been an equitable assignment see PARA 428 post.

3 *Colburn v Duncombe* (1838) 9 Sim 151; *Sweet v Cater* (1841) 11 Sim 572; *Sims v Marryat* (1851) 17 QB 281; *Photocrom Co Ltd v H & W Nelson Ltd* (1927) MacG Cop Cas (1923-28) 293; cf *London Printing and Publishing Alliance Ltd v Cox* [1891] 3 Ch 291, CA; and *Levy v Rutley* (1871) LR 6 CP 523 (where an agreement to assign on a condition which was never performed was held not to be an equitable assignment). See also *Western Front Ltd v Vestron Inc* [1987] FSR 66.

4 *Lakeview Computers plc v Steadman* (26 November 1999, unreported), CA; *Bookmakers' Afternoon Greyhound Services Ltd v Wilf Gilbert (Staffordshire) Ltd* [1994] FSR 723.

5 See PARA 161 ante.

6 *Performing Right Society Ltd v London Theatre of Varieties Ltd* [1924] AC 1 at 28, HL.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(ii) Assignment/166. Rights of assignee.

166. Rights of assignee.

A legal assignment of copyright¹, or of any part of it, vests the right assigned in the assignee so that he becomes the owner of the right and may take proceedings against persons who infringe or who have infringed it²; but a person who was not the owner of the copyright at the date of the issue of the claim form for an infringement cannot recover, although during the pendency of the claim he has taken an assignment which gives him the property necessary to maintain the claim³. An assignee who has an equitable title⁴ may, however, sue, provided that the legal owner⁵ is joined before trial or he gets in the legal title between the date of the issue of the claim form and the trial⁶.

Apart from express agreement, the assignee of copyright may alter the work as he pleases⁷, provided that such alterations, if published under the author's name, do not amount to a libel on the author⁸, or to a passing off⁹ of other work as the work of the author, or to an infringement of any of the author's moral rights¹⁰. An assignment of copyright imposes no obligation on the part of the assignee to publish¹¹, unless it is a term of the agreement that the work be published by him¹². The lack of such a term may, however, provide a ground for holding that the contract is invalid¹³.

1 As to the assignment of copyright see PARA 160 et seq ante.

2 As to infringement of copyright see PARA 311 et seq.

3 *Nicol v Barranger* (1921) MacG Cop Cas (1917-23) 219, CA; *Roban Jig & Tool Co Ltd and Elkadart Ltd v Taylor* [1979] FSR 130 at 137, CA. For this reason it is common for the assignment also to include the right to sue for past infringements and to full relief in respect of them: see eg *Wilden Pump & Engineering Co v Fusfeld* (1985) 8 IPR 250, CA; *Taypar Pty Ltd v Santic* (1989) 17 IPR 146 at 152.

4 As to equitable assignments see PARA 165 ante.

5 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

6 *Performing Right Society Ltd v London Theatre of Varieties Ltd* [1924] AC 1, HL; and see PARA 428 post.

7 *Cox v Cox* (1853) 11 Hare 118; *Frisby v British Broadcasting Corpn* [1967] Ch 932, [1967] 2 All ER 106.

8 *Lee v Gibbins* (1892) 67 LT 263; *Humphreys v DC Thomson & Co* (1908) Times, 1 May.

9 See PARA 14 ante.

10 As to moral rights see PARA 455 et seq post.

11 *Nichols v Amalgamated Press* (1908) MacG Cop Cas (1905-10) 166, CA.

12 See eg *Hole v Bradbury* (1879) 12 ChD 886 at 895.

13 *A Schroeder Music Publishing Co Ltd v Macaulay* [1974] 3 All ER 616, [1974] 1 WLR 1308, HL; *Clifford Davis Management Ltd v WEA Records Ltd* [1975] 1 All ER 237, [1975] 1 WLR 61, CA; and see PARA 169 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(ii) Assignment/167. Rights of assignor.

167. Rights of assignor.

An author¹ who has parted with his interest in copyright² for an agreed amount cannot obtain an injunction to restrain publication and sale of the work until the sum agreed on is paid³. An assignor of copyright⁴ on royalty terms cannot enforce payment of royalties against an assignee from his grantee, unless either the assignment imposes a charge on the copyright for the amount of royalties⁵ or the royalties are intended to represent instalments of purchase money where recovery might be enforceable by the exercise of a vendor's lien⁶. There is no obligation on a person who has acquired copyright with notice of a contract affecting it to perform the contract⁷.

In the absence of special agreement to the contrary the assignor of copyright is not entitled, after the assignment, to continue to sell such copies in his possession as were printed by him before the assignment⁸.

The law implies a term that an assignor must not do anything which will render what he has assigned valueless, as, for example, by publishing a similar work⁹. If an author has assigned a work consisting of selections made by him from an original work of his own, the assignee may prevent the assignor from using that part of the original work which is reproduced in the work which has been assigned¹⁰.

1 As to authorship see PARA 110 et seq ante.

2 For the meaning of 'copyright' see PARA 57 ante.

3 *Cox v Cox* (1853) 11 Hare 118.

4 As to the assignment of copyright see PARA 160 et seq ante.

5 *Werderman v Société Générale d'Electricité* (1881) 19 ChD 246 at 252, CA.

6 *Barker v Stickney* [1919] 1 KB 121, CA. See also LIEN vol 68 (2008) PARA 859 et seq.

7 *Barker v Stickney* [1919] 1 KB 121 at 131, CA, per Scrutton LJ; and see CONTRACT vol 9(1) (Reissue) para 750. If, however, the contract is one creating a licence under the copyright, the licence binds every successor in title except a bona fide purchaser for valuable consideration without actual or constructive notice: see the Copyright, Designs and Patents Act 1988 s 90(4); and PARA 175 post.

8 This would be an infringement of the distribution right conferred by *ibid* s 18 (as amended) (see PARA 322 post) and old cases to the contrary are no longer good law. For the present position see *Nelson v Rye* [1996] 2 All ER 186, [1996] FSR 313.

9 *Educational Company of Ireland Ltd v Fallon Bros Ltd and Getz* [1919] 1 IR 62. In this case it was also held that an express contract by an author not to publish a similar work would not be a contract in restraint of trade, and that if the author, having made such a contract, then went to another publisher, that publisher was put on inquiry and would have constructive notice of the contract, and would be restrained from publishing a work of the author which would constitute a breach of it.

10 *Metzler & Co (1920) Ltd v J Curwen & Sons Ltd* (1930) MacG Cop Cas (1928-35) 127.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(ii) Assignment/168. Satellite broadcasting; international co-production agreements.

168. Satellite broadcasting; international co-production agreements.

Where an agreement concluded before 1 January 1995 between two or more co-producers¹ of a film², one of whom is a national of an EEA state³, and the provisions of which grant to the parties exclusive rights to exploit all communication to the public⁴ of the film in separate geographical areas⁵, and the giving of such exclusive exploitation rights in relation to the United Kingdom⁶ does not expressly or by implication address satellite broadcasting⁷ from the United Kingdom, the person to whom those exclusive rights have been granted must not make any such broadcast without the consent of any other party to the agreement whose language-related exploitation rights would be adversely affected by that broadcast⁸.

1 For the meaning of 'producer' see PARA 110 note 3 ante; definition applied by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 25(4).

2 For the meaning of 'film' see PARA 86 ante; definition applied by ibid reg 25(4).

3 Ibid reg 29(1)(a). For the meaning of 'EEA state' see PARA 90 note 5 ante; definition applied by reg 25(4).

4 For the meaning of 'communication to the public' see PARA 326 post; definition applied by ibid reg 25(4).

5 Ibid reg 29(1)(b).

6 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

7 For the meaning of 'broadcast' see PARA 89 ante; definition applied by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 25(4). As to the place from which a broadcast is made in the case of a satellite transmission see PARA 90 note 3 ante; and as to the special provision for the protection of certain satellite broadcasts see PARA 90 ante.

8 Ibid reg 29(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(ii) Assignment/169. Invalidity.

169. Invalidity.

In some cases the courts have been willing to set aside a contract under which copyrights have been assigned¹ on the ground that the contract may be regarded as grossly unfair or oppressive and as such is in restraint of trade and, so far as unperformed, unenforceable². It seems that, in so far as the assignee is reliant on the contract as being an assignment of future copyright³ to claim title to the copyrights, his claim to ownership on that basis will fall with the contract⁴. In other cases contracts have been set aside as having been obtained through undue influence⁵, and the entire transaction is liable to be set aside, even though it may not be possible to return things to as they were⁶. In accordance with the general principles relating to contracts made by minors, a minor may repudiate a contract made during his minority unless the contract was, as a whole, one for his benefit⁷.

1 As to the assignment of copyright see PARAS 160-167 ante.

2 *A Schroeder Music Publishing Co Ltd v Macaulay* [1974] 3 All ER 616, [1974] 1 WLR 1308, HL; *Clifford Davis Management Co Ltd v WEA Records Ltd* [1975] 1 All ER 237, [1975] 1 WLR 61, CA; *O'Sullivan v Management Agency and Music Ltd* [1985] QB 428, [1985] 3 All ER 351, CA; *Zang Tumb Tuum Records Ltd v Johnson* [1993] EMLR 61, CA; *Silverstone Records Ltd v Mountfield*, *Zomba Music Publishers Ltd v Mountfield* [1993] EMLR 152. See, however, *Panayiotou v Sony Music Entertainment (UK) Ltd* [1994] Ch 142, [1994] 1 All ER 755 (where the claim failed). See also CONTRACT vol 9(1) (Reissue) para 716.

3 As to assignments of future copyright see PARA 162 ante.

4 See *A Schroeder Music Publishing Co Ltd v Macaulay* [1974] 3 All ER 616, [1974] 1 WLR 1308, HL. See also the other cases cited in note 2 supra.

5 *O'Sullivan v Management Agency and Music Ltd* [1985] QB 428, [1985] 3 All ER 351, CA; *Elton John v James* [1991] FSR 397. See also CONTRACT vol 9(1) (Reissue) para 712 et seq.

6 *O'Sullivan v Management Agency and Music Ltd* [1985] QB 428, [1985] 3 All ER 351, CA (assignments of copyrights set aside but publisher allowed reasonable remuneration, including profit element, for all the work done in publishing and exploiting a songwriter's compositions); *Elton John v James* [1991] FSR 397 (restitutionary relief refused on grounds of delay).

7 See *Chaplin v Leslie Frewin (Publishers) Ltd* [1966] Ch 71, [1965] 3 All ER 764, CA (minor's contract to write an autobiography held to be on the whole advantageous as it would enable him to make a start as an author). See also CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 12 et seq; CONTRACT vol 9(1) (Reissue) para 630.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(iii) Transfer of Rental Right/170. Presumption of transfer of rental right in case of film production agreement.

(iii) Transfer of Rental Right

170. Presumption of transfer of rental right in case of film production agreement.

Where an agreement concerning film¹ production is concluded between an author² and a film producer³, the author is presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right⁴ in relation to the film arising by virtue of the inclusion of a copy of the author's work in the film⁵. However, this provision does not apply to any rental right in relation to the film arising by virtue of the inclusion in the film of the screenplay, dialogue or music specifically created for and used in the film⁶.

Where the above provision does apply, the absence of signature by or on behalf of the author does not exclude the operation of the provisions⁷ relating to the effect of a purported assignment of future copyright⁸.

Where there is such a presumed transfer of the rental right, the author has nevertheless a right⁹ to equitable remuneration¹⁰.

1 For the meaning of 'film' see PARA 86 ante.

2 For these purposes, 'author' means an author, or prospective author, of a literary, dramatic, musical or artistic work: Copyright, Designs and Patents Act 1988 s 93A(2) (s 93A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 12). For the meaning of 'author' see PARA 110 ante; for the meaning of 'literary work' see PARA 67 ante; for the meanings of 'dramatic work' and 'musical work' see PARA 73 ante; and for the meaning of 'artistic work' see PARA 75 ante.

3 For these purposes, the reference to an agreement concluded between an author and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries: Copyright, Designs and Patents Act 1988 s 93A(5) (as added: see note 2 supra). For the meaning of 'producer' see PARA 110 note 3 ante.

4 'Rental right' means the right of a copyright owner to authorise or prohibit the rental of copies of the work: *ibid* s 178 (definition added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 10(3)). See further PARA 323 post.

5 Copyright, Designs and Patents Act 1988 s 93A(1) (as added: see note 2 supra). Section 93A (as added) applies in relation to an agreement concluded before 1 December 1996; and as s 93A (as added) so applies, the restriction in s 93A(3) (as added) (see the text to note 6 *infra*) is to be omitted: Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 32(1).

6 Copyright, Designs and Patents Act 1988 s 93A(3) (as added: see note 2 supra).

7 *Ie* *ibid* s 91(1): see PARA 162 ante.

8 *Ibid* s 93A(4) (as added: see note 2 supra).

9 *Ie* under *ibid* s 93B (as added): see PARA 171 post.

10 *Ibid* s 93A(6) (as added: see note 2 supra).

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171. Right to equitable remuneration where rental right transferred.

Where the author¹ of a literary², dramatic³, musical⁴ or artistic⁵ work or the principal director⁶ of a film⁷ has transferred his rental right⁸ concerning a sound recording⁹ or a film to the producer¹⁰ of the sound recording or film, he retains the right to equitable remuneration for the rental¹¹.

The right to equitable remuneration¹² may not be assigned by the author except to a collecting society¹³ for the purpose of enabling it to enforce the right on his behalf¹⁴. The right is, however, transmissible by testamentary disposition or by operation of law as personal or movable property; and it may be assigned or further transmitted by any person into whose hands it passes¹⁵. Equitable remuneration is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his¹⁶. The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, or, in default of agreement¹⁷, by the Copyright Tribunal¹⁸.

An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration¹⁹.

1 For the meaning of 'author' see PARA 110 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 It is not an infringement of any right which the principal director has by virtue of the Copyright and Related Rights Regulations 1996, SI 1996/2967 (as amended) to do anything on or after 1 December 1996 in pursuance of arrangements made for the exploitation of a film made before 19 November 1992; but this does not affect any right of his to equitable remuneration under the Copyright, Designs and Patents Act 1988 s 93B (as added): Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 36(2).

7 For the meaning of 'film' see PARA 86 ante.

8 For these purposes, references to the transfer of rental right by one person to another include any arrangement having that effect, whether made by him directly or through intermediaries: Copyright, Designs and Patents Act 1988 s 93B(6) (s 93B added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 14(1)). For the meaning of 'rental right' see PARA 170 note 4 ante.

9 For the meaning of 'sound recording' see PARA 84 ante.

10 For the meaning of 'producer' see PARA 110 note 3 ante.

11 Copyright, Designs and Patents Act 1988 s 93B(1) (as added: see note 8 supra). No act done before 1 December 1996 is, however, to be regarded as giving rise to any right to remuneration: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 26(2).

12 The right arises in respect of agreements made before 1 December 1996 (see *ibid* regs 1(2), 32(2)); but no right to equitable remuneration under the Copyright, Designs and Patents Act 1988 s 93B (as added) arises: (1) in respect of any rental of a sound recording or film before 1 April 1997 (Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 33(a)); or (2) in respect of rental after that date of a sound recording or film made in pursuance of an agreement entered into before 1 July 1994, unless the author or performer, or a successor in title of his, has before 1 January 1997 notified the person by whom the remuneration would be

payable that he intends to exercise that right (reg 33(b)). Nor does the right apply to a copy of the work acquired by a person before 1 December 1996 for the purpose of renting or lending it to the public: reg 34(1).

13 For these purposes, 'collecting society' means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one author: Copyright, Designs and Patents Act 1988 s 93B(7) (as added: see note 8 supra). As to collective licensing see PARA 182 et seq post.

14 Ibid s 93B(2) (as added: see note 8 supra).

15 Ibid s 93B(2) (as added: see note 8 supra).

16 Ibid s 93B(3) (as added: see note 8 supra).

17 Ie on a reference under ibid s 93C (as added): see PARA 289 post.

18 Ibid s 93B(4) (as added: see note 8 supra). As to the Copyright Tribunal see PARA 207 post. The concept of equitable remuneration must be interpreted uniformly in all the member states and applied by each member state, but it is for each member state to determine, in its own territory, the most appropriate criteria for assuring adherence to that concept: Case C-245/00 *Stichting ter Exploitatie van Naburige Rechten (SENA) v Nederlandse Omroep Stichting (NOS)* [2003] ECR I-1251, [2004] IP & T 256, ECJ.

19 Copyright, Designs and Patents Act 1988 s 93B(5) (as added: see note 8 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(iv) Transmission by Operation of Law/172. Transmission on death.

(iv) Transmission by Operation of Law

172. Transmission on death.

The copyright¹ in any work, whether published² or unpublished, will on the death of the owner³ of the copyright vest in his personal representatives as part of his estate, and must be dealt with by them in accordance with the provisions of his will or in the ordinary course of administration⁴. It seems that English rights in works of foreign origin will not vest in the personal representatives or heirs of the author or his assigns except by virtue of an English grant of representation⁵.

Where, by virtue of an agreement made before 1 August 1989⁶, at the time when any copyright comes into existence the person who, if he were then living, would be entitled to the copyright is dead, the copyright devolves as if it had subsisted immediately before his death and he had then been the owner of the copyright⁷.

Where under a bequest, whether specific or general, a person is entitled, beneficially or otherwise, to an original document or other material thing recording or embodying a literary⁸, dramatic⁹, musical¹⁰ or artistic work¹¹, which was not published before the death of the testator¹², or to an original material thing containing a sound recording¹³ or film¹⁴ which was not so published¹⁵, the bequest is, unless a contrary intention is indicated in the testator's will or a codicil to it, to be construed as including the copyright in the work, in so far as the testator was the owner of the copyright immediately before his death¹⁶. The above provisions do not apply where the testator died before 1 June 1957¹⁷ and, in the case of a testator dying between that date and 31 July 1989 inclusive, apply only to an original document embodying a work¹⁸. In the case of an author who died before 1 June 1957, the ownership after his death of a manuscript of his, where such ownership has been acquired under a testamentary disposition made by him and the manuscript is of a work which has not been published or performed in public, is prima facie proof of the copyright being with the owner of the manuscript¹⁹.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'published' see PARA 63 ante.

3 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 Copyright is treated as personal or movable property: see the Copyright, Designs and Patents Act 1988 s 90(1); and PARA 158 ante. A contract to write a book is a personal one, and, if an author dies before completion, his executors are not liable on the contract: *Marshall v Broadhurst* (1831) 1 Tyr 348 at 350. As to the right to royalties as between a tenant for life and remainderman see *Re Sullivan* [1930] 1 Ch 84; *Davidson's Trustees v Ogilvie* 1910 SC 294, Ct of Sess. As to the administration of estates see EXECUTORS AND ADMINISTRATORS.

5 *Novello & Co Ltd v Hinrichsen Edition Ltd* [1951] Ch 595 at 609, [1951] 1 All ER 779 at 786 (affd without affecting this point [1951] Ch 1026, [1951] 2 All ER 457, CA); *Redwood Music Ltd v B Feldman & Co Ltd* [1979] RPC 1. As to the treatment of Scottish confirmations and Northern Ireland grants of representation as English grants see the Administration of Estates Act 1971 s 1; and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) paras 239-240. As to the sealing in the United Kingdom of Commonwealth and colonial grants see the Colonial Probates Act 1892; the Administration of Estates Act 1971 s 11 (as amended); and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) para 245 et seq.

6 I.e. the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

7 Ibid s 170, Sch 1 para 26(2). This preserves the operation of the Copyright Act 1956 s 37(2) (repealed).

8 For the meaning of 'literary work' see PARA 67 ante.

9 For the meaning of 'dramatic work' see PARA 73 ante.

10 For the meaning of 'musical work' see PARA 73 ante.

11 For the meaning of 'artistic work' see PARA 75 ante.

12 Copyright, Designs and Patents Act 1988 s 93(a).

13 For the meaning of 'sound recording' see PARA 84 ante.

14 For the meaning of 'film' see PARA 86 ante.

15 Copyright, Designs and Patents Act 1988 s 93(b).

16 Ibid s 93.

17 Ibid Sch 1 para 30(1)(a). The date mentioned in the text is the date on which the Copyright Act 1956 (repealed) came into force in the United Kingdom: see PARA 35 ante.

18 Copyright, Designs and Patents Act 1988 Sch 1 para 30(1)(b).

19 Ibid Sch 1 para 30(2). Prior to the commencement of the Copyright Act 1911 (ie 1 July 1912: see PARA 30 ante) the person who after the death of the author was the owner of the manuscript had a right to acquire statutory copyright by publication (*Macmillan & Co v Dent* [1907] 1 Ch 107, CA), but, if the work had not been published before the commencement of the Copyright Act 1911, the statutory copyright under that Act vested in the person who at the date of that commencement had the common law copyright in the manuscript (*Re Dickens, Dickens v Hawksley* [1935] Ch 267, CA). As to copyright prior to the Copyright Act 1911 see PARA 17 et seq ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(iv) Transmission by Operation of Law/173. Revesting under the old law.

173. Revesting under the old law.

Where the author¹ of a literary², dramatic³, musical⁴ or artistic⁵ work was the first owner of the copyright⁶ in it, no assignment of the copyright or grant of any interest in it made by him, otherwise than by will, after 16 December 1911 and before 1 June 1957⁷ operates to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years from the author's death⁸. The reversionary interest in the copyright expectant on the termination of that period may on and after 1 August 1989⁹ be assigned¹⁰ by the author during his life but, in the absence of any assignment, devolves, on his death, on his personal representatives as part of his estate¹¹.

Nothing in the above provisions affects an assignment of the reversionary interest by a person to whom it has been assigned¹², an assignment of the reversionary interest after the death of the author by his personal representatives or any person becoming entitled to it¹³, or any assignment of the copyright after the reversionary interest has fallen in¹⁴.

Nothing in the above provisions applies to the assignment of the copyright in a collective work¹⁵ or a licence¹⁶ to publish a work or part of a work as part of a collective work¹⁷.

1 For the meaning of 'author' see PARA 110 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 For the meaning of 'copyright' see PARA 57 ante.

7 I.e. after the date of the passing of the Copyright Act 1911 and before the date on which the Copyright Act 1956 (repealed) came into force in the United Kingdom (see PARA 35 ante).

8 Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 27(1). This substantially continues the effect of the Copyright Act 1911 s 5(2) proviso (repealed), by virtue of which, in the case of works of joint authorship, the copyright reverted 25 years after the death of the author who died first or on the death of the author who died last, whichever was the later (see s 16(1) (repealed)). Assignments or grants made between 16 December 1911 (ie the date on which the Copyright Act 1911 was passed) and 1 July 1912 (ie the date on which the Copyright Act 1911 came into force in the United Kingdom: see PARA 30 ante) were affected by the revesting provision only if they were equitable assignments or grants of the new rights which came into force on the latter date: *Coleridge-Taylor v Novello & Co Ltd* [1938] Ch 850, [1938] 3 All ER 506, CA. As to the effect of the saving provisions of the Copyright Act 1956 (ie s 50, Sch 7 para 28 (repealed)) on the continuing effect of the Copyright Act 1911 s 5(2) proviso (repealed) between 1 June 1957 and 31 July 1989 see *Novello & Co Ltd v Keith Prowse Music Publishing Co Ltd* [2004] EWCA Civ 1776, [2005] IP & T 576, [2005] RPC 578.

In general, assignments made before 1 July 1912 transferred the copyright only for the period of copyright applicable before that date to the class of work concerned: see eg paras 17-18 ante. At the end of that period, copyright under the Copyright Act 1911 reverted to the author, but the assignee, on giving notice and paying a fresh consideration, was entitled to a new assignment of copyright for the remainder of the new period of copyright prescribed by that Act. Alternatively, he could continue to reproduce or perform the work on payment of royalties (when he became a non-exclusive licensee: *Loew's Inc v Littler* [1958] Ch 650, [1958] 2 All ER 200, CA); Copyright Act 1911 s 24(1) proviso (a) (repealed). The Copyright, Designs and Patents Act 1988 Sch 1 para 28(1), (2) preserves the operation, in accordance with the Copyright Act 1911 s 24(1) proviso (a) (repealed), of any event which occurred or notice which was given before the commencement of the Copyright Act 1956 (repealed). Where copyright subsists in a literary, dramatic, musical or artistic work made before 1 July 1912 in

relation to which the author, before the commencement of the Copyright Act 1911, made such an assignment or grant as was mentioned in s 24(1) proviso (a) (repealed), then, if before 1 August 1989 any event has occurred or notice has been given which by virtue of the Copyright Act 1956 s 50(1), Sch 7 para 38 (repealed) had any operation in relation to copyright in the work under the Copyright Act 1956, the event or notice has the corresponding operation in relation to copyright under the Copyright, Designs and Patents Act 1988: Sch 1 para 28(1), (2). Any right which immediately before 1 August 1989 would by virtue of the Copyright Act 1956 Sch 7 para 38(3) (repealed) have been exercisable in relation to the work, or copyright in it, is exercisable in relation to the work or copyright in it under the Copyright, Designs and Patents Act 1988: Sch 1 para 28(3). If, in accordance with the Copyright Act 1956 Sch 7 para 38(4) (repealed), copyright would, on a date after the commencement of the Copyright Act 1956, have reverted to the author or his personal representatives and that date falls after the commencement of the Copyright, Designs and Patents Act 1988: (1) the copyright in the work reverts to the author or his personal representatives, as the case may be; and (2) any interest of any other person in the copyright which subsists on that date by virtue of any document made before the commencement of the Copyright Act 1911 thereupon determines: Copyright, Designs and Patents Act 1988 Sch 1 para 28(4).

9 le the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

10 As to the assignment of copyright see PARA 160 et seq ante.

11 Copyright, Designs and Patents Act 1988 Sch 1 para 27(2). This, in effect, re-enacts the Copyright Act 1911 s 5(2) proviso (repealed), but permits as from 1 August 1989 inter vivos assignment.

12 Copyright, Designs and Patents Act 1988 Sch 1 para 27(3)(a).

13 Ibid Sch 1 para 27(3)(b).

14 Ibid Sch 1 para 27(3)(c).

15 For these purposes, 'collective work' means: (1) any encyclopaedia, dictionary, yearbook or similar book; (2) a newspaper, review, magazine or similar periodical; and (3) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated: ibid Sch 1 para 27(5).

16 As to licences see PARA 175 et seq post.

17 Copyright, Designs and Patents Act 1988 Sch 1 para 27(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(iv) Transmission by Operation of Law/174. Bankruptcy.

174. Bankruptcy.

On the bankruptcy of an owner of copyright¹ the copyright vests in the trustee immediately on his appointment taking effect, or, in the case of the official receiver, on his becoming trustee, as an asset for distribution amongst the creditors².

Where a person who is adjudged bankrupt on a petition presented before 29 December 1986³ is liable, by virtue of a transaction entered into before that date, to pay royalties or a share of the profits to any person in respect of any copyright or interest in copyright comprised in the bankrupt's estate, the limitation on the trustee's powers in relation to copyright under the Bankruptcy Act 1914⁴ applies in relation to the trustee of that estate as it applies in relation to a trustee in bankruptcy under that Act⁵.

Where a bankrupt publisher has before his bankruptcy granted an exclusive licence in respect of a copyright vested in him on royalty terms and agreed to share the royalty with the author, the author remains entitled to his share of the royalty notwithstanding the bankruptcy⁶.

1 As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

2 See the Insolvency Act 1986 s 306(1); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 391. Where an author had made an equitable assignment for value to a company of all incomes which would in future accrue to him from the Performing Right Society Limited in respect of fees, royalties etc, the company's right prevailed against the claim of the author's trustee in bankruptcy, as the contract had been wholly executed by the author through his assigning copyright to the society: *Re Trytel, ex p Trustee of Property of Bankrupt v Performing Right Society Ltd and Soundtrac Film Co Ltd* [1952] 2 TLR 32. As to after-acquired property see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 445 et seq.

3 I.e the date on which the Insolvency Act 1986 came into force: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 2.

4 I.e the Bankruptcy Act 1914 s 60 (repealed). Where the property of a bankrupt comprised the copyright or any interest in the copyright in any work, and he was liable to pay to the author of the work royalties or a share of the profits in respect of the work, the trustee in bankruptcy was not entitled to sell, or authorise the sale of, any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author the royalties or share of profits which would have been payable by the bankrupt; nor could the trustee, without the consent of the author or of the court, assign the right, transfer the interest or grant any interest in the right by licence, except on terms which would secure to the author payments by way of royalty or share of profits at a rate not less than that which the bankrupt was liable to pay: s 60 (repealed). Before the Bankruptcy Act 1914 an author who had assigned his copyright could prove in the bankruptcy for the amount of his royalty only: *Re Grant Richards, ex p Warwick Deeping* [1907] 2 KB 33. The Bankruptcy Act 1914 s 60 (repealed) did not apply in winding up: see *Re Health Promotion Ltd* [1932] 1 Ch 65.

5 Insolvency Act 1986 s 437, Sch 11 para 15. See also BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 425.

6 *Henham v Alston Rivers Ltd* (1916) MacG Cop Cas (1911-16) 330; but see criticism of this decision in *Re Health Promotion Ltd* [1932] 1 Ch 65.

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(v) Licences

A. VOLUNTARY LICENCES

175. Bare licences.

A licence¹ granted by a copyright owner² is binding on every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration and without notice³, actual or constructive, of the licence or a person deriving title from such a purchaser⁴.

A licence granted by a prospective owner⁵ of copyright is binding on every successor in title to his interest, or prospective interest, in the right, except a purchaser in good faith for valuable consideration and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser⁶.

A licence need not be in writing unless it is an exclusive licence⁷. A licence may be implied⁸ by a course of conduct⁹ but any such licence must be the minimum required to secure the intentions of the parties¹⁰.

A licence may be irrevocable if given for value¹¹, but the fact that the person to whom the consent was given has incurred expense in reliance on the consent continuing does not prevent the owner from revoking the consent¹². Where a contractual right of forfeiture has been exercised, there may be no equitable relief against forfeiture¹³. A licence to exercise 'cinematograph rights', at least if executed after talking films were known, would appear to include the right to make such films; but a licence to produce a play or moving picture films does not¹⁴.

1 As to licences granted before 1 June 1957 see PARAS 158, 173 ante.

2 As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

3 As to the doctrine of notice see EQUITY vol 16(2) (Reissue) para 576 et seq.

4 Copyright, Designs and Patents Act 1988 s 90(4). References in Pt I (ss 1-179) (as amended) to doing anything with, or without, the licence of the copyright owner are to be construed accordingly: s 90(4).

5 For the meaning of 'prospective owner' see PARA 162 ante.

6 Copyright, Designs and Patents Act 1988 s 91(3). References in Pt I (as amended) to doing anything with, or without, the licence of the copyright owner are to be construed accordingly: s 91(3).

7 As to exclusive licences see PARA 176 post.

8 As to implied licences see also PARA 319 post.

9 *Cooper v Stephens* [1895] 1 Ch 567 (sale of electro blocks authorised purchaser to print from them personally and to use copies for the purposes of his trade); *Hatton v Kean* (1859) 7 CBNS 268 (author of music written for a stage production deemed to have authorised the use of the music in the production); *Hall-Brown v Illiffe & Sons Ltd* (1929) MacG Cop Cas (1928-35) 88 (where a journalist sends an article to an editor without any reference to publication or remuneration, there is probably an implied authority to publish on payment at the standard rate); *Harold Drabble Ltd v Hycolite Manufacturing Co* (1928) 44 TLR 264 (work done by advertising agent for employer); *Mellor v Australian Broadcasting Commission* [1940] AC 491, [1940] 2 All ER 20, PC (note on pamphlet 'all our music is free for public performance' held to license broadcast performances). The sending

to a professional singer of copies of songs is not, however, an implied authority to sing them in public: *Performing Right Society v Coates* (1924) MacG Cop Cas (1923-28) 103. See also *Muhammad Abdul Jalil v Ram Dayal* (1916) ILR 38 All 484 (where the owner of copyright was held to have surrendered it to the governing body by which he was employed); *Blair v Osborne and Tomkins* [1971] 2 QB 78, [1971] 1 All ER 468, CA (licence to erect houses implied where architect's plans commissioned and fees paid); *Roberts v Candiware Ltd* [1980] FSR 352 (implied licence to purchaser of knitting pattern books to make garments for private but not for commercial use); *Beckingham v Hodgins* [2003] EWCA Civ 143, [2003] IP & T 1115, [2003] EMLR 376 (licence implied from failure to assert right to copyright); *Brighton v Jones* [2004] EWHC 1157 (Ch), [2005] IP & T 223, [2004] EMLR 507 (implied licence to use draft script). Cf *Stovin-Bradford v Volpoint Properties Ltd* [1971] Ch 1007, [1971] 3 All ER 570, CA (where no such licence was implied where considerably less than the normal fee was paid for the plans); *Fylde Microsystems Ltd v Key Radio Systems Ltd* [1998] FSR 449 (where no licence on grounds of commercial efficacy was implied); *R Griggs Group Ltd v Evans* [2005] EWCA Civ 11, [2005] IP & T 870, [2005] FSR 706 (no licence implied permitting designer to retain rights in logo). See also *Netupsky v Dominion Bridge Co Ltd* [1972] SCR 368, Can SC (licence to amend plans for new civic centre).

10 *Ray v Classic FM* [1998] FSR 622, [1998] All ER (D) 105; approved in *R Griggs Group Ltd v Evans* [2005] EWCA Civ 11, [2005] IP & T 870, [2005] FSR 706. See also *Durand v Molino* [2000] ECDR 620; *Clearsprings Management Ltd v Businesslink Ltd* [2005] EWHC 1487 (Ch), [2006] FSR 21, [2005] All ER (D) 172 (Jul); *ZAQ Askeri-ACCA v International Accounting Standards Committee Foundation* [2005] EWCA Civ 344.

11 *British Actors Film Co v Glover* [1918] 1 KB 299; *Hurst v Picture Theatres Ltd* [1915] 1 KB 1, CA; *Winter Garden Theatre (London) Ltd v Millennium Productions Ltd* [1948] AC 173, [1947] 2 All ER 331, HL. The duration of a licence given for value depends on the true effect of the contract giving it: see PARA 177 post; and CONTRACT vol 9(1) (Reissue) para 979.

12 *Bowden Bros v Amalgamated Pictorials Ltd* [1911] 1 Ch 386 (authority to use photographs revocable notwithstanding that blocks made for future use); *Hart v Hyman* (1916) MacG Cop Cas (1911-16) 301 (implied authority to publish article revocable notwithstanding that printing expenses had been incurred).

13 *Sport International Bussum NV v Inter-Footwear Ltd* [1984] 2 All ER 321, [1984] 1 WLR 776, HL. However, the position may be different where the licence confers a right of property such as an exclusive copyright licence. See also *BICC plc v Burndy Corp* [1985] Ch 232, [1985] 1 All ER 417, CA.

14 *Pathé Pictures Ltd v Bancroft* (1933) MacG Cop Cas (1928-35) 403; and see *JC Williamson Ltd v Metro-Goldwyn Mayer Theatres Ltd* (1937) 56 CLR 567; *Board of Governors of Hospital for Sick Children v Walt Disney Productions Inc* [1968] Ch 52, [1967] 1 All ER 1005, CA (licence granted in 1919 wide enough to include talking pictures).

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176. Exclusive licences.

An 'exclusive licence' means a licence in writing¹, signed² by or on behalf of the copyright owner³, authorising the licensee, to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright owner⁴. The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence⁵ as he has against the person granting the licence⁶. An exclusive licensee may bring proceedings for infringement in the same way as an assignee⁷.

1 For the meaning of 'writing' see PARA 66 note 5 ante.

2 The requirement in the Copyright, Designs and Patents Act 1988 s 92(1) that an exclusive licence be signed by or on behalf of the copyright owner is also satisfied in the case of a body corporate by the affixing of its seal: s 176(1). As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

3 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 Copyright, Designs and Patents Act 1988 s 92(1). The right referred to in s 92 is any right which could be exercised exclusively by the copyright owner; it includes a right to carry out all infringing acts but is not limited to the acts restricted by copyright as set out in s 16 (as amended) (see PARA 311 post) and is capable of including the rights protected by the provisions relating to secondary infringement (see PARA 329 et seq post): *Biotrading and Financing Oy v Biohit Ltd* [1998] FSR 109, CA (exclusive right to import). As to infringement see PARA 311 et seq post.

5 As to the persons who are so bound see PARA 176 ante.

6 Copyright, Designs and Patents Act 1988 s 92(2). Section 92(2) does not apply in relation to an exclusive licence granted before 1 August 1989: s 170, Sch 1 para 29.

7 See *ibid* s 101(1); and PARA 429 post.

UPDATE

176 Exclusive licences

NOTE 2--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1): see COMPANIES vol 14 (2009) PARA 283.

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177. Duration of licence.

In the case of a licence for a definite period, the licensee may, in the absence of anything to the contrary in the agreement, be at risk of being restrained from selling, after the expiration of the time specified in the agreement, copies produced during that period¹. Where under an agreement between an author and his publisher a licence is conferred on the publisher without limitation to any definite period, and where payment to the author is by royalties or by a share in the profits, the licence, although exclusive so long as it exists, is revocable; and the author may restrain the publication of any edition subsequent to the notice of revocation². An agreement to pay royalties on all copies of publications sold during a certain period implies an irrevocable licence to sell copies of such publications during the period³.

1 Such selling would be a breach of the distribution right conferred by the Copyright, Designs and Patents Act 1988 s 18 (as amended) (see PARA 322 post). Earlier cases to the contrary (see eg *Warne v Routledge* (1874) LR 18 Eq 497; *Howitt v Hall* (1862) 6 LT 348) are no longer good law. As to the current position see *Nelson v Rye* [1996] 2 All ER 186, [1996] FSR 313.

2 *Reade v Bentley* (1858) 4 K & J 656 (where an agreement to publish on profit-sharing terms was held to embody an implied licence revocable after the publication of each edition and before expense should be incurred in connection with the next edition). In *Warne v Routledge* (1874) LR 18 Eq 497, it was held that an author might determine a licence to publish, and publish a second edition himself, even before the first edition was sold out.

3 *Williams v Feldman* (1913) MacG Cop Cas (1911-16) 98.

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178. Assignment of licences.

A licence to print and publish contained in a publishing agreement is of a personal character and is not assignable, unless otherwise agreed, without the author's consent¹. This principle applies whether the publishing firm consists of an individual or partners or is a limited company². Thus outgoing partners cannot pass on to their successors, whether a new partnership³ or a limited company⁴, the licence originally granted in their favour. The principle also applies in the case of a licence to a theatrical producer⁵. A licence to print, publish and sell may authorise printing and publishing in the name of a person other than the licensee⁶.

1 *Messenger v British Broadcasting Co* [1927] 2 KB 543 at 553 per McCardie J; revsd on appeal [1928] 1 KB 660, CA, on the ground that the document in question was an assignment and not a licence; decision of the Court of Appeal affd [1929] AC 151, HL.

2 *Stevens v Benning* (1855) 6 De GM & G 223; *Reade v Bentley* (1858) 4 K & J 656; *Hole v Bradbury* (1879) 12 ChD 886 (partners); *Griffith v Tower Publishing Co Ltd and Moncrieff* [1897] 1 Ch 21; *Hales v T Fisher Unwin Ltd* (1923) MacG Cop Cas (1923-28) 31 (limited company).

3 *Hole v Bradbury* (1879) 12 ChD 886.

4 *Sampson Low, Marston & Co Ltd v Duckworth & Co* (1926) MacG Cop Cas (1923-28) 205.

5 *Messenger v British Broadcasting Co* [1927] 2 KB 543; revsd on the facts [1928] 1 KB 660, CA; decision of the Court of Appeal affd [1929] AC 151, HL.

6 *Booth v Edward Lloyd Ltd* (1910) 26 TLR 549. Thus the grant of 'the London right' in a play was held to license the grantee to authorise performances as well as to produce them himself: *Taylor v Neville* (1878) 47 LJQB 254, CA.

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179. Rights of licensees.

A licence is not a partial assignment of copyright¹; it is merely leave to do something which would otherwise be unlawful². A licensee has, however, the right to make alterations, except in so far as his licence expressly or impliedly restricts that right³.

A licensee, unless he is an exclusive licensee, cannot sue for infringement of copyright and even then he must join the copyright owner as co-claimant or as a defendant in the proceedings⁴; and a purchaser in good faith and for valuable consideration of the owner's interest without notice, actual or constructive, of a previous licence is unaffected by it⁵. The licensee may, however, sue the assignor for damages for breach of contract if the latter does not protect his interests⁶.

1 *London Printing and Publishing Alliance Ltd v Cox* [1891] 3 Ch 291 at 297 per Vaughan Williams J; on appeal [1891] 3 Ch 291 at 298, CA (where it was held that no licence had been granted). As to partial assignments of copyright see PARA 161 ante.

2 *Heap v Hartley* (1889) 42 ChD 461 at 470, CA, per Fry LJ. As to acts restricted by copyright see PARA 311 et seq post.

3 *Frisby v British Broadcasting Corp* [1967] Ch 932, [1967] 2 All ER 106. The right to make alterations is also subject to the author's moral rights (see PARA 455 et seq post). The court will readily imply a term limiting the right to make alterations: *Frisby v British Broadcasting Corp* supra at 949 and 115; and see PARA 4 text to note 7 ante.

4 See the Copyright, Designs and Patents Act 1988 s 101(1); and PARA 429 post. As to exclusive licences see PARA 176 ante.

5 See *ibid* s 90(4); and PARA 175 ante. See also *London Printing and Publishing Alliance Ltd v Cox* [1891] 3 Ch 291; *Nicol v Barranger* (1921) MacG Cop Cas (1917-23) 219, CA.

6 *Heap v Hartley* (1889) 42 ChD 461 at 469, CA; *Warne v Routledge* (1874) LR 18 Eq 497; *Sweet v Cater* (1841) 11 Sim 572; *Stevens v Benning* (1855) 6 De GM & G 223.

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180. Distinction between licences and assignments.

In the case of agreements between authors and publishers, or theatrical producers, it is often difficult to distinguish between an exclusive licence¹ and an assignment of copyright². Where the agreement between the author and his publisher contains no express terms as to the copyright, but the consideration is payment to the author of royalties or a share of the profits, rather than a sum of money paid down, the inference is that the copyright is not assigned³ but that a sole and exclusive licence is conferred on the publisher⁴. Thus where an author writes a book which is published on the terms that the author and publisher have an equal share in the profits, the copyright does not vest in the publisher, but belongs to the author⁵.

Where, however, an author agreed that the publisher should have the exclusive right of producing, publishing and selling a work, it was construed as an assignment of copyright⁶, as was a similar agreement in consideration of royalty payments⁷. A grant of the exclusive right of performing a play is an assignment of the performing right in the play even though the grant is limited as to area and is made in consideration of a royalty, and even though the parties are described as 'licensor' and 'licensee'⁸. A provision that in certain events the rights affected are to revert to the persons making the grant is ground for holding that the document is an assignment and not a licence⁹.

1 As to exclusive licences see PARA 176 ante.

2 As to assignments see PARA 160 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

3 *Hole v Bradbury* (1879) 12 ChD 886 at 895 per Fry J; *Re Jude's Musical Compositions* [1907] 1 Ch 651, CA; *Stevens v Benning* (1855) 6 De GM & G 223; *IRC v Longmans Green & Co Ltd* (1932) MacG Cop Cas (1928-35) 345 (grant of exclusive rights of translation and publication for a lump sum and royalty on excess copies sold; held to be a licence). Now that copyright may be partially assigned as to time or place (see PARA 161 ante), a grant of a limited right may more readily be construed as an assignment (see *British Actors Film Co Ltd v Glover* [1918] 1 KB 299); but in *Frisby v British Broadcasting Corp'n* [1967] Ch 932, [1967] 2 All ER 106, an exclusive right to televise a play for a limited period in consideration of a fee was held to be a licence. See also *Nomad Films International Pty Ltd v Export Development Grants Board* (1986) 6 IPR 321 (where the court had great difficulty in deciding whether a film distribution agreement was an assignment or a licence).

4 *Warne v Routledge* (1874) LR 18 Eq 497 at 501 per Jessel MR.

5 *Reade v Bentley* (1857) 3 K & J 271; *Lucas v Moncrieff* (1905) 21 TLR 683.

6 *Chaplin v Leslie Frewin (Publishers) Ltd* [1966] Ch 71, [1965] 3 All ER 764, CA.

7 *Jonathan Cape Ltd v Consolidated Press Ltd* [1954] 3 All ER 253, [1954] 1 WLR 1313; cf *Stevens v Benning* (1854) 1 K & J 168 (affd (1855) 6 De GM & G 223); *Hole v Bradbury* (1879) 12 ChD 886; *Sweet v Cater* (1841) 11 Sim 572.

8 *Messenger v British Broadcasting Co Ltd* [1929] AC 151, HL; followed in *Loew's Inc v Littler* [1958] Ch 650, [1958] 2 All ER 200, CA. See also *Erskine Macdonald Ltd v Eyles* [1921] 1 Ch 631; *Barstow v Terry* [1924] 2 Ch 316.

9 *Messenger v British Broadcasting Co Ltd* [1929] AC 151 at 156, HL, per Lord Hailsham LC; cf *Imperial Book Co Ltd v Black & Co Ltd* (1904) 8 OLR 9 (affd (1905) 35 SCR 488).

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181. Revived copyright; use as of right subject to reasonable royalty.

In the case of a work in which revived copyright¹ subsists, any acts restricted by the copyright² are treated as licensed by the copyright owner³, subject only to the payment of such reasonable royalty or other remuneration as may be agreed or determined, in default of agreement, by the Copyright Tribunal⁴.

A person intending to avail himself of such right must give reasonable notice of his intention to the copyright owner, stating when he intends to begin to do the acts⁵. If he does not give such notice, his acts are treated as not licensed⁶. If he does give such notice, his acts are treated as licensed and a reasonable royalty or other remuneration is payable in respect of them despite the fact that its amount is not agreed or determined until later⁷.

The above provisions do not apply if, or to the extent that, a licence to do the acts could be granted by a licensing body⁸, whether or not under a licensing scheme⁹.

No royalty or other remuneration is payable by virtue of the above provisions in respect of anything for which a royalty or other remuneration is payable under the provisions¹⁰ relating to the Hospital for Sick Children, Great Ormond Street, London¹¹.

1 For the meaning of 'revived copyright' see PARA 93 note 18 ante.

2 For the meaning of 'acts restricted by the copyright' see PARA 311 post.

3 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 24(1). As to the Copyright Tribunal see PARA 207 post. As to applications to settle royalty see PARA 297 post.

5 Ibid reg 24(2).

6 Ibid reg 24(3).

7 Ibid reg 24(4).

8 I.e. within the meaning of the Copyright, Designs and Patents Act 1988 s 116(2): see PARA 224 post.

9 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 24(5). As to licensing schemes see PARA 183 post.

10 I.e. the Copyright, Designs and Patents Act 1988 s 301, Sch 6 (as amended): see PARA 143 ante.

11 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 24(6).

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B. COLLECTIVE LICENSING

(A) IN GENERAL

182. Collective licensing.

Collective licensing arises where a number of copyright owners¹ assign² their rights to a collecting society or authorise it on their behalf to grant licences³ to potential users and to enforce the rights against infringers⁴. The system is advantageous for both copyright users and copyright owners. The former do not have to seek out and negotiate for licences from a larger number of copyright owners but may instead deal with one or a few collecting societies. Copyright owners are able, through the collecting society, to police infringements and to negotiate terms for the grant of licences.

There are now a large number of collecting societies in the United Kingdom, including the Copyright Licensing Agency Limited⁵, the Design and Artists Copyright Society Limited⁶, the Mechanical Copyright Protection Society Limited⁷, the Performing Right Society Limited⁸, the Phonographic Performance Limited⁹, and the Educational Recording Agency Limited¹⁰.

There are a number of statutory provisions governing collective licensing to encourage the development of licensing schemes and to ensure that such schemes provide as wide a coverage as possible¹¹.

1 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

2 As to assignments see PARA 160 et seq ante.

3 For a case relating to the interpretation of a collecting society licence see *Performing Rights Society Ltd v Boizot* [1999] EMLR 359, (1999) Times, 10 February, CA. As to licences generally see PARA 175 et seq ante.

4 As to the infringement of copyright see PARA 311 et seq post.

5 The Copyright Licensing Agency Limited operates a collective licensing system for copying from books, journals and periodicals.

6 The Design and Artists Copyright Society Limited operates a collective licensing system for copying the works of artists and designers.

7 The Mechanical Copyright Protection Society Limited operates a collective licensing system for the audio and audio-visual recording of music and lyrics.

8 Subject to certain exceptions, the Performing Right Society Limited licenses the right to perform in public the music and lyrics of its members. The main exceptions are the so-called 'grand rights', ie the presentation in dramatic form of a musical work which was originally written as a dramatico-musical work (eg an opera or musical show) or for a ballet.

9 The Phonographic Performance Limited licenses the performance in public of sound recordings owned or controlled by its members.

10 The Educational Recording Agency Limited licenses the off-air recording by educational establishments of television and radio programmes.

11 As to collective licensing see PARA 183 et seq post.

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(B) CERTIFICATION OF LICENSING SCHEMES

183. Certification of licensing schemes.

A person operating or proposing to operate a licensing scheme¹ may apply to the Secretary of State² to certify the scheme for the purposes of:

- 108 (1) the educational recording of broadcasts³;
- 109 (2) making abstracts of scientific or technical articles⁴;
- 110 (3) lending to the public of copies of certain works⁵;
- 111 (4) making sub-titled copies of broadcasts for people who are deaf or hard of hearing⁶; or
- 112 (5) the reprographic copying of published works by educational establishments⁷.

The Secretary of State must, by order made by statutory instrument, certify the scheme if he is satisfied that it enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences⁸ and sets out clearly the charges, if any, payable and the other terms on which licences will be granted⁹. The scheme must be scheduled to the order and the certification comes into operation¹⁰ on such date, not less than eight weeks after the order is made, as may be specified in the order¹¹ or, if the scheme is the subject of a reference¹¹ to the Copyright Tribunal¹², any later date on which the order of the Tribunal comes into force or the reference is withdrawn¹³. A variation of the scheme is not effective unless a corresponding amendment of the order is made¹⁴.

The order must be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms¹⁵.

1 For the meaning of 'licensing scheme' see PARA 224 post.

2 In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 355.

3 Copyright, Designs and Patents Act 1988 s 143(1)(a) (s 143(a), (d) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). As to the educational recording of broadcasts see the Copyright, Designs and Patents Act 1988 s 35; and PARA 350 post.

4 Ibid s 143(1)(b). As to the making abstracts of scientific or technical articles see s 60; and PARA 387 post.

5 Ibid s 143(1)(c) (substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 11(4)). As to the lending to the public of copies of certain works see the Copyright, Designs and Patents Act 1988 s 66 (as substituted); and PARA 393 post.

6 Ibid s 143(1)(d) (as amended: see note 3 supra). As to the making sub-titled copies of broadcasts for people who are deaf or hard of hearing see s 74; and PARA 402 post.

7 Ibid s 143(1)(e). As to the reprographic copying of published works by educational establishments see s 141; and PARA 189 post.

8 Ibid s 143(2)(a).

9 Ibid s 143(2)(b). The following orders have been made: the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University) Order 2003, SI 2003/187 (amended by SI 2003/2498); and the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Educational Recording Agency Limited) Order 2005, SI 2005/222.

10 Ie for the purposes of the Copyright, Designs and Patents Act 1988 s 35, s 60, s 66 (as substituted), s 74 or s 141, as the case may be.

11 Ibid s 143(3)(a).

11 Ie under ibid s 118: see PARA 225 post.

12 As to the Copyright Tribunal see PARA 207 post.

13 Copyright, Designs and Patents Act 1988 s 143(3)(b).

14 Ibid s 143(4). The Secretary of State must make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under s 118, s 119 (see PARA 226 post) or s 120 (see PARA 241 post) and may do so in any other case if he thinks fit: s 143(4).

15 Ibid s 143(5). See eg the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts and Cable Programmes) (Educational Recording Agency Limited) (Revocation) Order 2006, SI 2006/35.

UPDATE

183 Certification of licensing schemes

NOTE 9--SI 2005/222 revoked: SI 2008/211. See also Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Educational Recording Agency Limited) Order 2007, SI 2007/266 (amended by SI 2008/211, SI 2009/20).

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(C) SCHEMES AND LICENCES FOR REPROGRAPHIC COPYING

184. Implied indemnity in certain schemes and licences for reprographic copying.

The following provisions apply to:

- 113 (1) schemes¹ for licensing reprographic copying² of published³ literary⁴, dramatic⁵, musical⁶ or artistic⁷ works, or the typographical arrangement of published editions⁸; and
- 114 (2) licences granted by licensing bodies⁹ for such copying¹⁰,

where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work¹¹.

There is implied:

- 115 (a) in every such scheme an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme¹²; and
- 116 (b) in every such licence an undertaking by the licensing body to indemnify the licensee¹³,

against any liability¹⁴ incurred by him by reason of his having infringed copyright by making¹⁵ or authorising¹⁶ the making of reprographic copies of a work in circumstances within the apparent scope of his licence¹⁷.

Such a scheme or licence may contain reasonable provision with respect to the manner in which, and time within which, claims under the undertaking implied by these provisions are to be made¹⁸, and for enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount of his liability to indemnify¹⁹.

1 For the meaning of 'licensing scheme' see PARA 224 post.

2 'Reprographic copy' and 'reprographic copying' refer to copying by means of a reprographic process; and 'reprographic process' means a process for making facsimile copies or involving the use of an appliance for making multiple copies, and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a film or sound recording: Copyright, Designs and Patents Act 1988 s 178. 'In electronic form' means in a form usable only by electronic means; and 'electronic' means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy: s 178. 'Facsimile copy' includes a copy which is reduced or enlarged in scale: s 178. For the meaning of 'film' see PARA 86 ante; and for the meaning of 'sound recording' see PARA 84 ante.

3 For the meaning of 'published' see PARA 63 ante.

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'dramatic work' see PARA 73 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 For the meaning of 'artistic work' see PARA 75 ante.

8 Copyright, Designs and Patents Act 1988 s 136(1)(a). For the meaning of 'published edition' see PARA 92 ante.

9 For the meaning of 'licensing body' see PARA 224 post.

10 Copyright, Designs and Patents Act 1988 s 136(1)(b).

11 Ibid s 136(1).

12 Ibid s 136(2)(a).

13 Ibid s 136(2)(b).

14 'Liability' includes liability to pay costs; and ibid s 136 applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of such infringement: s 136(4). For the meaning of 'copyright' see PARA 57 ante.

15 As to infringement by making copies see PARA 314 et seq post.

16 As to infringement by authorisation see PARA 328 post.

17 Copyright, Designs and Patents Act 1988 s 136(2). The circumstances of a case are within the apparent scope of a licence if: (1) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and (2) the licence does not expressly provide that it does not extend to copyright of the description infringed: s 136(3).

18 Ibid s 136(5)(a).

19 Ibid s 136(5)(b).

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(D) REPROGRAPHIC COPYING BY EDUCATIONAL ESTABLISHMENTS

185. Power to extend coverage of scheme or licence.

If it appears to the Secretary of State¹ with respect to a specified licensing scheme² which is operated by a licensing body³, or a specified licence⁴, so far as it provides for the grant of licences, or is a licence, authorising the making by or on behalf of educational establishments⁵ for the purposes of instruction of reprographic copies⁶ of published⁷ literary⁸, dramatic⁹, musical¹⁰ or artistic¹¹ works, or of the typographical arrangement of published editions¹² that:

- 117 (1) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it¹³; and
- 118 (2) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners¹⁴,

he may by order provide that the scheme or licence is to extend to those works¹⁵.

Where he proposes to make such an order, the Secretary of State must give notice of the proposal to the copyright owners, the licensing body in question and such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit¹⁶. The notice must inform those persons of their right to make written¹⁷ or oral representations to the Secretary of State about the proposal within six months¹⁸ from the date of the notice; and, if any of them wishes to make oral representations, the Secretary of State must appoint a person to hear the representations and report to him¹⁹. In considering whether to make an order, the Secretary of State must take into account any representations so made to him and such other matters as appear to him to be relevant²⁰.

1 As to the Secretary of State see PARA 183 note 2 ante.

2 I.e. a licensing scheme to which the Copyright, Designs and Patents Act 1988 ss 118-123 apply: see s 117 (as substituted) and PARA 223 et seq post.

3 Ibid s 137(1)(a). For the meaning of 'licensing body' see PARA 224 post.

4 Ibid s 137(1)(b). A specified licence is one to which ss 125-128 apply: see s 124 (as substituted); and PARA 253 et seq post.

5 For the meaning of 'educational establishment', and as to references to anything done 'on behalf of' an educational establishment, see PARA 190 post.

6 For the meaning of 'reprographic copy' see PARA 184 note 2 ante.

7 For the meaning of 'published' see PARA 63 ante.

8 For the meaning of 'literary work' see PARA 67 ante.

9 For the meaning of 'dramatic work' see PARA 73 ante.

10 For the meaning of 'musical work' see PARA 73 ante.

11 For the meaning of 'artistic work' see PARA 75 ante.

12 Copyright, Designs and Patents Act 1988 s 137(1), (2). For the meaning of 'published edition' see PARA 92 ante. Section 137 also applies in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment: Copyright (Application of Provisions relating to Educational Establishments to Teachers) (No 2) Order 1989, SI 1989/1067, art 2. For the meanings of 'teacher' and 'pupil' see PARA 190 note 7 post.

13 Copyright, Designs and Patents Act 1988 s 137(2)(a).

14 Ibid s 137(2)(b). As to who is the owner of the copyright in a work see PARA 118 et seq ante.

15 Ibid s 137(2). The power to make such orders is not exercisable by statutory instrument and such orders are not recorded in this work. As to applications for the variation or discharge of such orders see PARA 186 post; and as to appeals against such orders see PARA 187 post. As to when such an order comes into effect see PARA 280 post. The Secretary of State also has power to set up an inquiry into provisions authorising educational establishments to make copies for the purposes of instruction: see PARAS 188-189 post.

16 Ibid s 137(3).

17 For the meaning of 'written' see PARA 66 note 5 ante.

18 'Month' means calendar month: Interpretation Act 1978 s 5, Sch 1.

19 Copyright, Designs and Patents Act 1988 s 137(4).

20 Ibid s 137(5).

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186. Variation or discharge of order extending scheme or licence.

The owner of the copyright¹ in a work in respect of which an order is in force extending the coverage of a scheme or licence² may apply to the Secretary of State³ for the variation or discharge of the order, stating his reasons for making the application⁴. The Secretary of State must not entertain an application made within two years of the making of the original order, or of the making of an order on a previous application⁵, unless it appears to him that the circumstances are exceptional⁶.

On considering the reasons for the application, the Secretary of State may confirm the order forthwith; but, if he does not do so, he must give notice of the application to the licensing body in question⁷ and such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit⁸. The notice must inform those persons of their right to make written⁹ or oral representations to the Secretary of State about the application within the period of two months¹⁰ from the date of the notice; and if any of them wishes to make oral representations, the Secretary of State must appoint a person to hear the representations and report to him¹¹. In considering the application, the Secretary of State must take into account the reasons for the application, any representations so made to him and such other matters as appear to him to be relevant¹².

The Secretary of State may make such order as he thinks fit confirming or discharging the order (or, as the case may be, the order as previously varied), or varying (or further varying) it so as to exclude works from it¹³.

1 As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

2 I.e. an order under the Copyright, Designs and Patents Act 1988 s 137: see PARA 185 ante.

3 As to the Secretary of State see PARA 183 note 2 ante.

4 Copyright, Designs and Patents Act 1988 s 138(1). Section 138 also applies in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment: Copyright (Application of Provisions relating to Educational Establishments to Teachers) (No 2) Order 1989, SI 1989/1067, art 2. For the meaning of 'educational establishment' see PARA 190 post; and for the meanings of 'teacher' and 'pupil' see PARA 190 note 7 post.

5 I.e. a previous application under the Copyright, Designs and Patents Act 1988 s 138.

6 Ibid s 138(2).

7 Ibid s 138(3)(a). For the meaning of 'licensing body' see PARA 224 post.

8 Ibid s 138(3)(b).

9 For the meaning of 'written' see PARA 66 note 5 ante.

10 For the meaning of 'month' see PARA 185 note 18 ante.

11 Copyright, Designs and Patents Act 1988 s 138(4).

12 Ibid s 138(5).

13 Ibid s 138(6). The power to make such orders is not exercisable by statutory instrument and such orders are not recorded in this work. As to appeals against such orders see PARA 187 post. As to when such an order comes into effect see PARA 280 post.

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187. Appeals against orders.

The owner of the copyright¹ in a work which is the subject of an order extending the coverage of a scheme or licence² may appeal to the Copyright Tribunal³.

Where the Secretary of State⁴ has made an order⁵ confirming, varying or discharging an order extending the coverage of a scheme or licence, the person who applied for the order⁶ or any person or organisation representative of educational establishments who was given notice of the application for the order and made⁷ representations⁸ may appeal to the Tribunal⁹.

1 As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

2 Ie an order under the Copyright, Designs and Patents Act 1988 s 137: see PARA 185 ante.

3 Ibid s 139(1). As to the making of and the procedure on such appeals see PARA 280 et seq post. As to the Copyright Tribunal see PARA 207 post. Section 139 also applies in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment: Copyright (Application of Provisions relating to Educational Establishments to Teachers) (No 2) Order 1989, SI 1989/1067, art 2. For the meaning of 'educational establishment' see PARA 190 post; and for the meanings of 'teacher' and 'pupil' see PARA 190 note 7 ante.

4 As to the Secretary of State see PARA 183 note 2 ante.

5 Ie an order under the Copyright, Designs and Patents Act 1988 s 138: see PARA 186 ante.

6 Ibid s 139(2)(a).

7 Ie in accordance with ibid s 138(4): see PARA 186 ante.

8 Ibid s 139(2)(b).

9 Ibid s 139(2). As to the making of and the procedure on such appeals see PARA 280 et seq post.

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188. Inquiry whether new scheme or general licence required.

The Secretary of State¹ may appoint a person to inquire into the question whether new provision is required, whether by way of a licensing scheme² or general licence³, to authorise the making by or on behalf of educational establishments⁴ for the purposes of instruction of reprographic copies⁵ of:

- 119 (1) published⁶ literary⁷, dramatic⁸, musical⁹ or artistic¹⁰ works¹¹; or
- 120 (2) the typographical arrangement of published editions¹²,

of a description which appears to the Secretary of State not to be covered by an existing licensing scheme or general licence and not to fall within his power¹³ to extend existing schemes and licences to similar works¹⁴.

The procedure to be followed in relation to an inquiry is such as may be prescribed by regulations made by the Secretary of State¹⁵. The regulations must, in particular, provide for notice to be given to:

- 121 (a) persons or organisations appearing to the Secretary of State to represent the owners of copyright¹⁶ in works of that description¹⁷; and
- 122 (b) persons or organisations appearing to the Secretary of State to represent educational establishments¹⁸,

and for the making of written¹⁹ or oral representations by such persons; but this is without prejudice to the giving of notice to, and the making of representations by, other persons and organisations²⁰.

The person appointed to hold the inquiry must not recommend the making of new provision unless he is satisfied that it would be of advantage to educational establishments to be authorised to make reprographic copies of the works in question²¹, and that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners²². If he does recommend the making of new provision, he must specify any terms, other than terms as to charges payable, on which authorisation under the new provision should be available²³.

1 As to the Secretary of State see PARA 183 note 2 ante.

2 For the meaning of 'licensing scheme' see PARA 224 post.

3 A 'general licence' means a licence granted by a licensing body which covers all works of the description to which it applies: Copyright, Designs and Patents Act 1988 s 140(7). For the meaning of 'licensing body' see PARA 224 post.

4 For the meaning of 'educational establishment', and as to references to anything done 'on behalf of' an educational establishment, see PARA 190 post.

5 For the meaning of 'reprographic copy' see PARA 184 note 2 ante.

- 6 For the meaning of 'published' see PARA 63 ante.
- 7 For the meaning of 'literary work' see PARA 67 ante.
- 8 For the meaning of 'dramatic work' see PARA 73 ante.
- 9 For the meaning of 'musical work' see PARA 73 ante.
- 10 For the meaning of 'artistic work' see PARA 75 ante.
- 11 Copyright, Designs and Patents Act 1988 s 140(1)(a).
- 12 Ibid s 140(1)(b). For the meaning of 'published edition' see PARA 92 ante.
- 13 Ie the power conferred by ibid s 137: see PARA 185 ante.
- 14 Ibid s 140(1). Section 140 also applies in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment: Copyright (Application of Provisions relating to Educational Establishments to Teachers) (No 2) Order 1989, SI 1989/1067, art 2. For the meanings of 'teacher' and 'pupil' see PARA 190 note 7 post.
- 15 Copyright, Designs and Patents Act 1988 s 140(2). Such regulations must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 140(6). At the date at which this volume states the law no such regulations had been made.
- 16 As to who is the owner of the copyright in a work see PARA 118 et seq ante.
- 17 Copyright, Designs and Patents Act 1988 s 140(3)(a).
- 18 Ibid s 140(3)(b).
- 19 For the meaning of 'written' see PARA 66 note 5 ante.
- 20 Copyright, Designs and Patents Act 1988 s 140(3).
- 21 Ibid s 140(4)(a).
- 22 Ibid s 140(4)(b). As to the grant of a statutory licence where a recommendation is not implemented see PARA 189 post.
- 23 Ibid s 140(5).

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189. Statutory licence where recommendation not implemented.

The Secretary of State¹ may, within one year of the making of a recommendation², by order³ provide that, if, or to the extent that, provision has not been made in accordance with the recommendation, the making by or on behalf of an educational establishment⁴, for the purposes of instruction, of reprographic copies⁵ of the works to which the recommendation relates is to be treated as licensed by the owners of the copyright⁶ in the works⁷.

For that purpose, provision is to be regarded as having been made in accordance with the recommendation if:

- 123 (1) a certified licensing scheme⁸ has been established under which a licence is available to the establishment in question⁹; or
- 124 (2) a general licence¹⁰ has been granted to or for the benefit of that establishment¹¹, or referred¹² by or on behalf of that establishment to the Copyright Tribunal¹³, or offered to or for the benefit of that establishment and refused without such a reference¹⁴,

and the terms of the scheme or licence accord with the recommendation¹⁵.

The order must also provide that any existing licence authorising the making of such copies, not being a licence granted under a certified licensing scheme or a general licence, ceases to have effect to the extent that it is more restricted or more onerous than the licence provided for by the order¹⁶. The order must provide for the licence to be free of royalty but, as respects other matters, subject to any terms specified in the recommendation and to such other terms as the Secretary of State may think fit¹⁷. The order may provide that where a copy which would otherwise be an infringing copy¹⁸ is made in accordance with the licence provided by the order but is subsequently dealt with¹⁹, it is to be treated as an infringing copy for the purposes of that dealing, and, if that dealing infringes copyright, for all subsequent purposes²⁰.

The order must not come into force until at least six months²¹ after it is made²².

An order may be varied from time to time, but not so as to include works other than those to which the recommendation relates or remove any terms specified in the recommendation; and an order may be revoked²³.

1 As to the Secretary of State see PARA 183 note 2 ante.

2 ie a recommendation under the Copyright, Designs and Patents Act 1988 s 140: see PARA 188 ante.

3 Any such order must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: *ibid* s 141(8). At the date at which this volume states the law no such order had been made.

4 For the meaning of 'educational establishment', and as to references to anything done 'on behalf of' an educational establishment, see PARA 190 post.

5 For the meaning of 'reprographic copy' see PARA 184 note 2 ante.

6 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

7 Copyright, Designs and Patents Act 1988 s 141(1). Section 141 also applies in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment: Copyright (Application of Provisions relating to Educational Establishments to Teachers) (No 2) Order 1989, SI 1989/1067, art 2. For the meanings of 'teacher' and 'pupil' see PARA 190 note 7 post.

8 A 'certified licensing scheme' means a licensing scheme certified for the purposes of the Copyright, Designs and Patents Act 1988 s 141 under s 143 (as amended) (see PARA 183 ante): s 141(9).

9 Ibid s 141(2)(a).

10 For the meaning of 'general licence' see PARA 188 note 3 ante.

11 Copyright, Designs and Patents Act 1988 s 141(2)(b)(i).

12 Ie under ibid s 125: see PARA 254 post.

13 Ibid s 141(2)(b)(ii). As to the Copyright Tribunal see PARA 207 post.

14 Ibid s 141(2)(b)(iii).

15 Ibid s 141(2).

16 Ibid s 141(3).

17 Ibid s 141(4).

18 For the meaning of 'infringing copy' see PARA 335 post.

19 'Dealt with' means sold or let for hire, offered or exposed for sale or hire, or exhibited in public: Copyright, Designs and Patents Act 1988 s 141(5). As to the meaning of 'sell' see PARA 330 note 6 post; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 post.

20 Ibid s 141(5).

21 For the meaning of 'month' see PARA 185 note 18 ante.

22 Copyright, Designs and Patents Act 1988 s 141(6).

23 Ibid s 141(7).

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190. Meaning of 'educational establishment'.

'Educational establishment' means¹:

- 125 (1) any school²; and
- 126 (2) any other description of educational establishment specified³ by order of the Secretary of State⁴,

and an order under head (2) above may specify a description of educational establishment by reference to the instruments from time to time in force under any enactment specified in the order⁵.

The Secretary of State may by order provide that the provisions relating to educational establishments⁶ are to apply, with such modifications and adaptations as may be specified in the order, in relation to teachers⁷ who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment⁸.

An order under the above provisions must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament⁹.

References to anything being done 'on behalf of' an educational establishment are references to its being done for the purposes of that establishment by any person¹⁰.

1 Ie in a provision of the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

2 Ibid s 174(1)(a). 'School', in relation to England and Wales, has the same meaning as in the Education Act 1996 (see EDUCATION vol 15(1) (2006 Reissue) para 81): Copyright, Designs and Patents Act 1988 s 174(3)(a) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 83).

3 Ie for the purposes of the Copyright, Designs and Patents Act 1988 Pt I (as amended).

4 Ibid s 174(1)(b). As to the Secretary of State see PARA 183 note 2 ante. The Copyright (Educational Establishments) Order 2005, SI 2005/223, has been made.

5 Copyright, Designs and Patents Act 1988 s 174(4).

6 Ie ibid Pt I (as amended).

7 In relation to an educational establishment the expressions 'teacher' and 'pupil' include, respectively, any person who gives and any person who receives instruction: ibid s 174(5).

8 Ibid s 174(2). The Copyright (Application of Provisions relating to Educational Establishments to Teachers) (No 2) Order 1989, SI 1989/1067 (amended by SI 2003/2498) has been made. See PARAS 185 note 12, 186 note 4, 187 note 3, 188 note 14, 189 note 7 ante, 280 note 6, 350 note 6, 351 note 9 post.

9 Copyright, Designs and Patents Act 1988 s 174(7).

10 Ibid s 174(6).

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(E) COLLECTIVE ADMINISTRATION OF CABLE-RETRANSMISSION RIGHTS

191. Compulsory collective administration of certain rights in relation to cable retransmission.

The right of an owner of copyright¹ in a literary², dramatic³, musical⁴ or artistic⁵ work, sound recording⁶ or film⁷ to grant or refuse authorisation for cable retransmission⁸ of a wireless broadcast from another EEA state⁹ in which the work is included, known as the 'cable retransmission right'¹⁰, may be exercised against a cable operator¹¹ only through a licensing body¹².

Where a copyright owner has not transferred management of his cable retransmission right to a licensing body, the licensing body which manages the rights of the same category is deemed to be mandated to manage his right; and where more than one licensing body manages rights of that category, he may choose which of them is deemed to be mandated to manage his right¹³. Such a copyright owner has the same rights and obligations resulting from any relevant agreement between the cable operator and the licensing body as have copyright owners who have transferred management of their cable retransmission right to that licensing body¹⁴. Any rights to which a copyright owner may be so entitled must be claimed within the period of three years beginning with the date of the cable retransmission concerned¹⁵.

The above provisions do not affect any rights exercisable by the maker of the broadcast¹⁶, whether in relation to the broadcast or a work included in it¹⁷.

1 As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 For the meaning of 'sound recording' see PARA 84 ante.

7 For the meaning of 'film' see PARA 86 ante.

8 'Cable retransmission' means the reception and immediate retransmission by cable, including the transmission of microwave energy between terrestrial fixed points, of a wireless broadcast: Copyright, Designs and Patents Act 1988 s 144A(7) (s 144A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 7; and the Copyright, Designs and Patents Act 1988 s 144A(7) substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 15(2)). For the meaning of 'wireless broadcast' see PARA 88 note 8 ante.

9 For the meaning of 'EEA state' see PARA 90 note 5 ante.

10 Copyright, Designs and Patents Act 1988 s 144A(1) (as added (see note 8 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 5(6); and the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 2(4), Sch 4).

- 11 'Cable operator' means a person responsible for cable retransmission of a wireless broadcast: Copyright, Designs and Patents Act 1988 s 144A(7) (as added and substituted: see note 8 supra).
- 12 Ibid s 144A(2) (as added: see note 8 supra). For the meaning of 'licensing body' see PARA 224 post.
- 13 Ibid s 144A(3) (as added: see note 8 supra).
- 14 Ibid s 144A(4) (as added: see note 8 supra).
- 15 Ibid s 144A(5) (as added: see note 8 supra).
- 16 As to who is the maker of a broadcast see PARA 89 ante.
- 17 Copyright, Designs and Patents Act 1988 s 144A(6) (as added: see note 8 supra).

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C. COMPULSORY LICENCES

(A) COMPETITION REPORTS

192. Powers exercisable in consequence of report of the Competition Commission.

Where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Office of Fair Trading or, as the case may be, the Competition Commission¹ under the powers² to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations, consists of or includes:

- 127 (1) conditions in licences³ granted by the owner of copyright⁴ in a work restricting the use of the work by the licensee or the right of the copyright owner to grant other licences⁵;
- 128 (2) or a refusal of a copyright owner to grant licences on reasonable terms⁶,

the powers relating to enforcement orders⁷ include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the copyright must be available as of right⁸.

The Secretary of State, the Office of Fair Trading or, as the case may be, the Competition Commission may only exercise the powers available by virtue of these provisions if he or it is satisfied that to do so does not contravene any Convention relating to copyright to which the United Kingdom⁹ is a party¹⁰.

The terms of a licence available by virtue of these provisions must, in default of agreement, be settled by the Copyright Tribunal¹¹ on an application by the person requiring the licence; and terms so settled must authorise the licensee to do everything in respect of which a licence is so available¹². Where the terms of a licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made¹³.

1 As to the Secretary of State see PARA 183 note 2 ante. As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6; and as to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12.

2 I.e. the powers in the Competition Act 1980 s 12(5) or the Enterprise Act 2002 s 41(2), s 55(2), s 66(6), s 75(2), s 83(2), s 138(2), s 147(2) or s 160(2) or Sch 7 para 5(2) or Sch 7 para 10(2): see COMPETITION vol 18 (2009) PARAS 10, 188. Certain references in the Copyright, Designs and Patents Act 1988 s 144(1), (2) (as substituted) to various provisions of the Enterprise Act 2002 are modified to include references to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, SI 2003/1592: see art 16, Sch 4 para 7(1).

3 As to licences generally see PARA 175 et seq ante.

4 As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

5 Copyright, Designs and Patents Act 1988 s 144(1)(a) (s 144(1), (2) substituted, and s 144(1A) added, by the Enterprise Act 2002 s 278(1), Sch 25 para 18(1), (2)).

6 Copyright, Designs and Patents Act 1988 s 144(1)(b) (as substituted: see note 5 supra).

7 le the powers conferred by the Enterprise Act 2002 Sch 8: see COMPETITION vol 18 (2009) PARA 232 et seq.

8 Copyright, Designs and Patents Act 1988 s 144(1A) (as added: see note 5 supra). The references to anything permitted by the Enterprise Act 2002 Sch 8 in the Competition Act 1980 s 12(5A) (as added) and in the Enterprise Act 2002 s 75(4)(a), s 83(4)(a), s 84(2)(a), s 89(1), s 160(4)(a), s 161(3)(a) and s 164(1), and Sch 7 paras 5, 10 and 11 (see COMPETITION vol 18 (2009) PARAS 10, 188) must be construed accordingly: Copyright, Designs and Patents Act 1988 s 144(2) (as substituted: see note 5 supra). See also note 2 supra.

9 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

10 Copyright, Designs and Patents Act 1988 s 144(3) (amended by the Enterprise Act 2002 Sch 25 para 18(1), (3)(a), (b)). As to the Conventions relating to copyright to which the United Kingdom is a party see PARA 452 post.

11 As to the Copyright Tribunal see PARA 207 post.

12 Copyright, Designs and Patents Act 1988 s 144(4). As to the settlement of such licences by the Tribunal see PARA 293 et seq post.

13 Ibid s 144(5).

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(B) LENDING TO THE PUBLIC

193. Lending to the public of copies of certain works.

The Secretary of State¹ may by order² provide that in such cases as may be specified in the order the lending³ to the public of copies of literary⁴, dramatic⁵, musical⁶ or artistic⁷ works, sound recordings⁸ or films⁹ must be treated as licensed by the copyright owner¹⁰ subject only to the payment of such reasonable royalty or other payment as may be agreed or determined, in default of agreement, by the Copyright Tribunal¹¹.

1 As to the Secretary of State see PARA 183 note 2 ante.

2 As to such orders see PARA 393 post.

3 For the meaning of 'lending' see PARA 323 post.

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'dramatic work' see PARA 73 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 For the meaning of 'artistic work' see PARA 75 ante.

8 For the meaning of 'sound recording' see PARA 84 ante.

9 For the meaning of 'film' see PARA 86 ante.

10 As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

11 Copyright, Designs and Patents Act 1988 s 66(1) (substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 11(2)). As to the Copyright Tribunal see PARA 207 post. As to the settlement of such royalty by the Tribunal see PARA 284 post.

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(C) LICENSING SCHEMES

194. Licensing schemes.

Where a licensing scheme¹ is in operation, any person who claims that he has been refused a licence or has been offered a licence on unreasonable terms may apply to the Copyright Tribunal² for a order declaring that he is entitled to a licence on such terms as are specified by the Tribunal³.

1 For the meaning of 'licensing scheme' see PARA 224 post.

2 As to the Copyright Tribunal see PARA 207 post.

3 See the Copyright, Designs and Patents Act 1988 s 121; and PARA 245 post.

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(D) USER OF RIGHT OF SOUND RECORDINGS IN BROADCASTS

195. Circumstances in which right available.

The right to use sound recordings¹ in broadcasts² applies to the inclusion in a broadcast of any sound recordings if:

- 129 (1) a licence to include those recordings in the broadcast could be granted by a licensing body³ or such a body could procure the grant of a licence to do so⁴;
- 130 (2) one of the specified conditions below⁵ applies⁶; and
- 131 (3) the person including those recordings in the broadcast has complied with the requirement⁷ to serve notice of his intention to exercise his right⁸.

Where the person including the recordings in the broadcast does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence⁹, being a licence:

- 132 (a) whose terms as to payment for including the recordings in the broadcast would be acceptable to him or comply with an order of the Copyright Tribunal¹⁰ relating to such a licence or any scheme under which it would be granted¹¹; and
- 133 (b) allowing unlimited needletime¹² or such needletime as he has demanded¹³.

Where he holds a licence to include the recordings in the broadcast, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms¹⁴ allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within head (a) above¹⁵.

1 For these purposes, 'sound recording' does not include a film soundtrack when accompanying a film: Copyright, Designs and Patents Act 1988 s 135A(5) (s 135A added by the Broadcasting Act 1990 s 175(1)). For the meaning of 'sound recording' generally see PARA 84 ante; and for the meaning of 'film' see PARA 86 ante.

The Secretary of State may by order, subject to such transitional provision as appears to him to be appropriate, amend the Copyright, Designs and Patents Act 1988 ss 135A-135G (as added) (see the text and notes 2-15 infra; and PARAS 196-197, 272-274, 279 post) so as: (1) to include in any reference to sound recordings any works of a description specified in the order (s 135H(1)(a) (s 135H added by the Broadcasting Act 1996 s 139(1)); or (2) to exclude from any reference to a broadcast any broadcast of a description so specified (Copyright, Designs and Patents Act 1988 s 135H(1)(b) (as so added; and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). An order must be made by statutory instrument; and no order may be made unless a draft of it has been laid before and approved by resolutions of each House of Parliament: Copyright, Designs and Patents Act 1988 s 135H(2) (as so added). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 183 note 2 ante.

'Broadcast' does not include any broadcast which is a transmission of the kind specified in s 6(1A)(b) or (c) (as added) (see PARA 89 ante): s 135A(5) (as so added; definition added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 15(1)). For the meaning of 'broadcast' generally see PARA 89 ante.

2 ie the right under the Copyright, Designs and Patents Act 1988 s 135C (as added): see PARA 197 post.

3 For the meaning of 'licensing body' see PARA 224 post.

4 Copyright, Designs and Patents Act 1988 s 135A(1)(a) (as added (see note 1 supra); and s 135A(1)-(3), (5), (6) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2).

5 Ie the condition specified in the Copyright, Designs and Patents Act 1988 s 135A(2) or (3) (as added and amended): see the text to notes 9-15 infra.

6 Ibid s 135A(1)(b) (as added: see note 1 supra).

7 Ie the requirement in ibid s 135B (as added): see PARA 196 post.

8 Ibid s 135A(1)(c) (as added and amended: see notes 1, 4 supra).

9 For these purposes, the reference to refusing to grant, or procure the grant of, a licence, includes failing to do so within a reasonable time of being asked: ibid s 135A(4) (as added: see note 1 supra).

10 Ie under ibid s 135D (as added): see PARA 272 post. As to the Copyright Tribunal see PARA 207 post.

11 Ibid s 135A(2)(a) (as added and amended: see notes 1, 4 supra).

12 'Needletime' means the time in any period, whether determined as a number of hours in the period or a proportion of the period, or otherwise, in which any proceedings may be included in a broadcast: ibid s 135A(5) (as added and amended: see notes 1, 4 supra).

13 Ibid s 135A(2)(b) (as added: see note 1 supra).

14 For these purposes, the reference to refusing to substitute or procure the substitution of terms includes failing to do so within a reasonable time of being asked: ibid s 135A(4) (as added: see note 1 supra).

15 Ibid s 135A(3) (as added and amended: see notes 1, 4 supra).

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196. Notice of intention to exercise right.

A person intending to avail himself of the right to use sound recordings¹ in broadcasts² must:

- 134 (1) give notice to the licensing body³ of his intention to exercise the right, asking the body to propose terms of payment⁴; and
- 135 (2) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so⁵.

Where he has a licence to include the recordings in a broadcast, the date specified in a notice under head (2) above must not be⁶ sooner than the date of expiry of that licence⁷.

Before the person intending to avail himself of the right begins to exercise it, he must give reasonable notice to the Copyright Tribunal⁸ of his intention to exercise the right, and of the date on which he proposes to begin to do so⁹; and he must apply to the Tribunal¹⁰ to settle the terms of payment¹¹.

1 For the meaning of 'sound recording' see PARA 195 note 1 ante.

2 I.e. the right under the Copyright, Designs and Patents Act 1988 s 135C (as added): see PARA 197 post. For the meaning of 'broadcast' see PARA 195 note 1 ante.

3 For the meaning of 'licensing body' see PARA 224 post.

4 Copyright, Designs and Patents Act 1988 s 135B(1)(a) (s 135B added by the Broadcasting Act 1990 s 175(1)). 'Terms of payment' means terms as to payment for including sound recordings in a broadcast: Copyright, Designs and Patents Act 1988 s 135A(6) (added by the Broadcasting Act 1990 s 175(1); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).

5 Copyright, Designs and Patents Act 1988 s 135B(1)(b) (as added: see note 4 supra). Strict compliance with these requirements is necessary: *Phonographic Performance Ltd v Retail Broadcast Services Ltd* [1995] FSR 813.

6 I.e. except in a case falling within the Copyright, Designs and Patents Act 1988 s 135A(3) (as added): see PARA 195 ante.

7 Ibid s 135B(2) (as added (see note 4 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2).

8 As to the Copyright Tribunal see PARA 207 post.

9 Copyright, Designs and Patents Act 1988 s 135B(3)(a) (as added: see note 4 supra).

10 I.e. under ibid s 135D (as added): see PARA 272 post.

11 Ibid s 135B(3)(b) (as added: see note 4 supra).

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197. Conditions for exercise of right.

A person who, on or after the date specified in a notice to the licensing body¹, includes in a broadcast² any sound recordings³ in the specified circumstances⁴, and who:

- 136 (1) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to inclusion in the broadcast of those recordings⁵;
- 137 (2) provides that body with such information about their inclusion in the broadcast as it may reasonably require⁶; and
- 138 (3) makes the required payments⁷ to the licensing body⁸,

is in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright⁹ in question¹⁰.

Payments are to be made at not less than quarterly intervals in arrears¹¹. The amount of any payment is that determined in accordance with any order of the Copyright Tribunal¹² or, if no such order has been made, in accordance with any proposal for terms of payment made by the licensing body pursuant to a request¹³ duly made¹⁴, or, where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment duly notified¹⁵ to the licensing body¹⁶.

Where the above provisions apply to the inclusion in a broadcast of any sound recordings, they do so in place of any licence¹⁷.

The above provisions do not confer any right on broadcasters to make and keep copies of sound recordings, since they are directed only at protecting the broadcaster against what would otherwise be infringement of the copyright owner's exclusive right to broadcast the recordings, and broadcasting does not necessarily require the making of any such copies¹⁸.

1 Ie a notice under the Copyright, Designs and Patents Act 1988 s 135B(1)(b) (as added): see PARA 196 ante. For the meaning of 'licensing body' see PARA 224 post.

2 For the meaning of 'broadcast' see PARA 195 note 1 ante.

3 For the meaning of 'sound recording' see PARA 195 note 1 ante.

4 Ie the circumstances specified in the Copyright, Designs and Patents Act 1988 s 135A (as added and amended): see PARA 195 ante.

5 Ibid s 135C(1)(a) (s 135C added by the Broadcasting Act 1990 s 175(1); and the Copyright, Designs and Patents Act 1988 s 135C(1), (4) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).

6 Copyright, Designs and Patents Act 1988 s 135C(1)(b) (as added and amended: see note 5 supra).

7 Ie the payments required by ibid s 135C (as added): see the text and notes 11-16 infra.

8 Ibid s 135C(1)(c) (as added: see note 5 supra).

9 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante. As to infringement of copyright see PARA 311 et seq post.

- 10 Copyright, Designs and Patents Act 1988 s 135C(1) (as added and amended: see note 5 supra).
- 11 Ibid s 135C(2) (as added: see note 5 supra).
- 12 Ie under ibid s 135D (as added): see PARA 272 post. As to the Copyright Tribunal see PARA 207 post.
- 13 Ie a request made under ibid s 135B (as added and amended): see PARA 196 ante.
- 14 Ibid s 135C(3)(a) (as added: see note 5 supra).
- 15 Ie notified under ibid s 135B(1)(b) (as added): see PARA 196 ante.
- 16 Ibid s 135C(3)(b) (as added: see note 5 supra).
- 17 Ibid s 135C(4) (as added and amended: see note 5 supra).
- 18 *Phonographic Performance Ltd v AEI Rediffusion Music Ltd* [1998] Ch 187, [1997] 3 All ER 560. As to the right to make ephemeral copies for the purposes of broadcasting see PARA 396 post.

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(E) PROGRAMME LISTINGS INFORMATION

198. Duty to provide advance information about programmes.

A person providing a programme service¹ must make available information relating to the programmes to be included in the service to any person ('the publisher') wishing to publish in the United Kingdom² any such information³.

The duty so imposed is to make available information as to the titles of the programmes which are to be, or may be, included in the service on any date, and the time of their inclusion, to any publisher who has asked the person providing the programme service to make such information available to him and reasonably requires it⁴. The information to be made available to a publisher is to be made available as soon after it has been prepared as is reasonably practicable but in any event not later than when it is made available to any other publisher⁵ and, in the case of information in respect of all the programmes to be included in the service in any period of seven days, not later than the beginning of the preceding period of 14 days, or such other number of days as may be prescribed by the Secretary of State⁶. The duty to provide advance information is not satisfied by providing the information on terms, other than terms as to copyright, prohibiting or restricting publication in the United Kingdom by the publisher⁷.

The above provisions do not require any information to be given about any advertisement⁸.

The programme listing information is protected by copyright⁹ and any publisher intending to publish the information thus requires a licence¹⁰.

1 For the meaning of 'programme service' see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) para 328. As to the programme services to which the Broadcasting Act 1990 s 176 (as amended) applies and the persons who provide them or are to be treated as providing them see s 176(7) (amended by the Broadcasting Act 1996 s 148(1), Sch 10 para 10; and the Communications Act 2003 s 360(3), Sch 15 Pt 1 para 60).

2 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

3 Broadcasting Act 1990 s 176(1).

4 Ibid s 176(2).

5 Ibid s 176(3)(a).

6 Ibid s 176(3)(b). An order under s 176(3) is subject to annulment in pursuance of a resolution of either House of Parliament: s 176(4). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 183 note 2 ante.

7 Ibid s 176(5).

8 Ibid s 176(8).

9 *Independent Television Publications Ltd v Time Out Ltd and Elliott, British Broadcasting Corp'n v Time Out Ltd and Elliott* [1984] FSR 64. The exercise by broadcasting companies of their copyrights in programme listing information to prevent the publication by third parties of comprehensive weekly listings schedules has been held to be an abuse of a dominant position contrary to the Treaty establishing the European Economic Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 86 and the Treaty on European Union

(Maastricht, 7 February 1992; Cm 1934) Title II art G para (1): Cases C-241/91P, C-242/91P *Radio Telefis Eireann v EC Commission (Intellectual Property Owners Inc, intervening)* [1995] All ER (EC) 416, sub nom *Radio Telefis Eireann and Independent Television Publications Ltd (Intellectual Property Owners Inc, intervening) v EC Commission (Magill Television Guide Ltd intervening)* [1995] 4 CMLR 718, [1995] FSR 530, EC].

10 The Broadcasting Act 1990 Sch 17 (see PARA 199 et seq post) applies to any information or future information which the person providing a programme service to which s 176 (as amended) applies is or may be required to make available under s 176 (as amended): s 176(6).

Where the person providing a programme service has assigned to another the copyright in works containing information to which s 176(6), Sch 17 applies, the person providing the programme service, not the assignee, is to be treated as the owner of the copyright for the purposes of licensing any act restricted by the copyright done on or after 1 January 1991: Sch 17 para 1(1), (2). Where the assignment by the person providing the programme service occurred before 29 September 1989, then, in relation to any act restricted by the copyright so assigned, Sch 17 para 1(2) does not have effect and references in Sch 17 to the person providing the programme service are references to the assignee: Sch 17 para 1(3). For these purposes, references to works include future works; and references to the copyright in works include future copyright: Sch 17 para 7(3). As to future copyright see PARA 162 ante. As to acts restricted by copyright see PARA 311 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(v) Licences/C. COMPULSORY LICENCES/(E) Programme Listings Information/199. Circumstances in which the right to use programme listing information is available.

199. Circumstances in which the right to use programme listing information is available.

The right to use programme listing information¹ applies to any act restricted by the copyright in works² containing specified information³ done by the publisher⁴ if:

- 139 (1) a licence to do the act could be granted by the person providing the programme service⁵ but no such licence is held by the publisher⁶;
- 140 (2) the person providing the programme service refuses to grant to the publisher a licence⁷ to do the act, being a licence of such duration and of which the terms as to payment for doing the act are such as would be acceptable to the publisher⁸; and
- 141 (3) the publisher has complied with the requirement⁹ to give notice of his intention to exercise the right¹⁰.

1 Ie the right conferred by the Broadcasting Act 1990 s 176(6), Sch 17 para 4: see PARA 201 post.

2 As to works and the copyright in works see PARA 198 note 10 ante.

3 Ie the information specified in the Broadcasting Act 1990 s 176(6): see PARA 198 note 10 ante.

4 References to anything done by the publisher include anything done on his behalf: *ibid* Sch 17 para 7(2). For the meaning of 'the publisher' see PARA 198 ante.

5 For the meaning of 'programme service', and as to the person providing such a service, see PARA 198 note 1 ante.

6 Broadcasting Act 1990 Sch 17 para 2(1)(a).

7 The reference to refusing to grant a licence includes failing to do so within a reasonable time of being asked: *ibid* Sch 17 para 2(2).

8 *Ibid* Sch 17 para 2(1)(b).

9 Ie the requirement in *ibid* Sch 17 para 3: see PARA 200 post.

10 *Ibid* Sch 17 para 2(1)(c).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(v) Licences/C. COMPULSORY LICENCES/(E) Programme Listings Information/200. Notice of intention to exercise right to use programme listing information.

200. Notice of intention to exercise right to use programme listing information.

A publisher¹ intending to avail himself of the right to use programme listing information² must:

- 142 (1) give notice of his intention to the person providing the programme service³, asking that person to propose terms for payment⁴; and
- 143 (2) after receiving the proposal or the expiry of a reasonable time, give reasonable notice to the person providing the programme service of the date on which he proposes to begin exercising the right and the terms of payment in accordance with which he intends to do so⁵.

Before exercising the right, the publisher must give reasonable notice to the Copyright Tribunal⁶ of his intention to exercise the right and of the date on which he proposes to begin to do so⁷; and he must apply to the Tribunal⁸ to settle the terms of payment⁹.

1 For the meaning of 'the publisher' see PARA 198 ante.

2 I.e. the right conferred by the Broadcasting Act 1990 s 176(6), Sch 17 para 4: see PARA 201 post.

3 For the meaning of 'programme service', and as to the persons providing such a service, see PARA 198 note 1 ante.

4 Broadcasting Act 1990 Sch 17 para 3(1)(a). References to the terms of payment are references to the terms as to payment for doing any act restricted by the copyright in works containing information to which Sch 17 applies (see PARA 198 note 10 ante): Sch 17 para 2(3). As to acts restricted by copyright see PARA 311 et seq post.

5 Ibid Sch 17 para 3(1)(b). Strict compliance with these requirements is required: cf *Phonographic Performance Ltd v Retail Broadcast Services Ltd* [1995] FSR 813.

6 As to the Copyright Tribunal see PARA 207 post.

7 Broadcasting Act 1990 Sch 17 para 3(2)(a).

8 I.e. under ibid Sch 17 para 5: see PARA 304 post.

9 Ibid Sch 17 para 3(2)(b). There have been a number of applications to the Tribunal of which some were heard together as test cases: see *News Group Newspapers Ltd v Independent Television Publications Ltd* [1993] RPC 173, Copyright Tribunal.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(v) Licences/C. COMPULSORY LICENCES/(E) Programme Listings Information/201. Conditions for exercise of right to use programme listing information.

201. Conditions for exercise of right to use programme listing information.

Where the publisher¹, on or after the date specified in his notice of intention to use programme listing information², does any act in the specified circumstances³, he is, if he makes the required payments⁴, in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence to do so granted by the person providing the programme service⁵.

Payments are to be made at not less than quarterly intervals in arrears⁶. The amount of any payment is that determined in accordance with any order of the Copyright Tribunal⁷ or, if no order has been made, in accordance with any proposal for terms of payment⁸ made by the person providing the programme service pursuant to a request⁹ duly made¹⁰, or, where no proposal has been so made or the amount determined in accordance with the proposal so made appears to the publisher to be unreasonably high, in accordance with the terms of payment duly¹¹ notified¹².

1 For the meaning of 'the publisher' see PARA 198 ante.

2 I.e. a notice under the Broadcasting Act 1990 s 176(6), Sch 17 para 3(1)(b): see PARA 200 ante.

3 As to acts done by the publisher see PARA 199 note 4 ante. As to the circumstances in which the right to use programme listing information is available see PARA 199 ante.

4 I.e. the payments required by the Broadcasting Act 1990 Sch 17 para 4: see the text and notes 5-12 infra.

5 Ibid Sch 17 para 4(1). For the meaning of 'programme service', and as to the persons providing such a service, see PARA 198 note 1 ante. As to the infringement of copyright see PARA 311 et seq post.

6 Ibid Sch 17 para 4(2).

7 I.e. under ibid Sch 17 para 5: see PARA 304 post. As to the Copyright Tribunal see PARA 207 post.

8 As to the terms of payment see PARA 200 note 4 ante.

9 I.e. a request under the Broadcasting Act 1990 Sch 17 para 3(1)(a): see PARA 200 ante.

10 Ibid Sch 17 para 4(3)(a).

11 I.e. notified under ibid Sch 17 para 3(1)(b): see PARA 200 ante.

12 Ibid Sch 17 para 4(3)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(v) Licences/C. COMPULSORY LICENCES/(F) Patents, Designs etc/202. Patents and registered designs.

(F) PATENTS, DESIGNS ETC

202. Patents and registered designs.

Under the Patents Act 1977¹ and the Registered Designs Act 1949², ancillary use may be made of copyright material when use of a patented invention or of a registered design is made for the services of the Crown.

¹ Ie under the Patents Act 1977 s 57(1) (as amended): see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 408.

² Ie under the Registered Designs Act 1949 s 12, Sch 1 para 2(1) (as amended): see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 731.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(v) Licences/C. COMPULSORY LICENCES/(F) Patents, Designs etc/203. Employee inventions.

203. Employee inventions.

Where an invention belongs, as between an employee and his employer, to the employee¹, nothing done by or on his behalf or any person claiming under him for the purposes of pursuing an application for a patent or by any person for the purpose of working or performing the invention is to be taken to infringe any copyright to which, as between him and his employer, the latter is entitled in any model or document relating to the invention².

1 Ie by virtue of the provisions of the Patents Act 1977 s 39: see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 369.

2 Ibid s 39(3) (added by the Copyright, Designs and Patents Act 1988 s 295, Sch 5 para 11).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(v) Licences/C. COMPULSORY LICENCES/(F) Patents, Designs etc/204. Licences of right in respect of designs made before 1 August 1989.

204. Licences of right in respect of designs made before 1 August 1989.

It is not an infringement of any copyright¹ in a design document² or model recording or embodying a design for anything other than an artistic work³ or a typeface⁴ to make an article to the design or to copy⁵ an article made to the design⁶. Nor is it an infringement of the copyright to issue to the public⁷, or include in a film⁸ or communicate to the public⁹, anything the making of which was¹⁰ not an infringement of that copyright¹¹.

These exceptions to infringement do not, however, apply until after 31 July 1999¹² in relation to a design recorded or embodied in a design document or model before 1 August 1989¹³. During the period between 1 August 1989 and 31 July 1999 inclusive, or so much of that period during which copyright subsists, the provisions as to licences of right in relation to design right¹⁴ apply to any relevant copyright as in relation to design right¹⁵; accordingly, licences of right are available under the copyrights protecting the design¹⁶, the terms of which may, in default of agreement, be settled by the comptroller¹⁷. A licence so granted must relate only to acts which would be permitted¹⁸ if the design document or model had been made on or after 1 August 1989¹⁹. For this reason, under a licence of right sub-contracting and sub-licensing cannot be prohibited²⁰. A single application may be made covering more than one copyright²¹; and the licence runs from the date when the application is made to the comptroller²². Where a licence of right is so available, a person to whom a licence was granted before 1 August 1989 may apply to the comptroller for an order adjusting the terms of that licence²³.

1 For the meaning of 'copyright' see PARA 57 ante.

2 'Design document' means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise; and 'design' means the design of any aspect of the shape or configuration, whether internal or external, of the whole or part of an article, other than surface decoration: Copyright, Designs and Patents Act 1988 s 51(3). For the meaning of 'photograph' see PARA 77 ante.

3 For the meaning of 'artistic work' see PARA 75 ante.

4 For the meaning of 'typeface' see PARA 381 note 3 post.

5 For the meaning of 'copy' see PARA 314 post.

6 Copyright, Designs and Patents Act 1988 s 51(1). As to the application of s 51 see PARA 337 post. As to the operation of the defence to infringement offered by s 51 see *Lambretta Clothing Co Ltd v Teddy Smith (UK) Ltd* [2004] EWCA Civ 886, [2005] IP & T 609, [2005] RPC 88.

7 For the meaning of 'issue copies to the public' see PARA 322 post.

8 For the meaning of 'film' see PARA 86 ante.

9 For the meaning of 'communication to the public' see PARA 326 post.

10 Ie by virtue of the Copyright, Designs and Patents Act 1988 s 51(1): see the text to notes 1-6 supra.

11 Ibid s 51(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 8(3)). For the purposes of the application of the Copyright, Designs and Patents Act 1988 s 51(2) (as amended) to things made before 1 August 1989, it is to be assumed that s 51(2) (as amended) was in force at all material times: s 170, Sch 1 para 14(4).

12 le ten years after the date on which the Copyright, Designs and Patents Act 1988 came into force. The Copyright, Designs and Patents Act 1988 came into force on 1 August 1989: see PARA 54 ante.

13 Ibid Sch 1 para 19(1). Nothing in Sch 1 para 19 affects the operation of any rule of law preventing or restricting the enforcement of copyright in relation to a design: Sch 1 para 19(9). Section 100 (right to seize infringing copies etc: see PARA 421 post) does not apply during the period of ten years referred to in Sch 1 para 19(1) in relation to anything to which it would not apply if the design in question had been first recorded or embodied in a design document or model on or after 1 August 1989: Sch 1 para 19(8).

14 le ibid ss 237-239 (availability of licences of right: see PARA 548 et seq post) and ss 247, 248 (application to comptroller to settle terms of licence of right: see PARAS 568, 572 post).

15 Ibid Sch 1 para 19(2). It has been held obiter that these provisions relating to licences of right are compatible with the Agreement on Trade-Related Aspects of Intellectual Property Rights (Marrakesh, 15 April 1994; OJ L336, 23.12.94, p 214) (see PARA 452 post): *Azrak-Hamway International Inc's Licence of Right (Design Right and Copyright) Application* [1997] RPC 134 (where it was also held that the Agreement on Trade-Related Aspects of Intellectual Property Rights was not susceptible to being directly invoked in the courts of member states). See also *Lenzing AG's European Patent (UK)* [1997] RPC 245.

16 See the Copyright, Designs and Patents Act 1988 Sch 1 para 19(2)(a).

17 See ibid Sch 1 para 19(2)(b). For the meaning of 'the comptroller' see PARA 548 note 5 post. As to the procedure before the comptroller see PARA 568 post. The provisions of ss 249, 250 (appeals and rules: see PARAS 558, 584 post) apply in relation to proceedings brought under or by virtue of Sch 1 para 19 as to proceedings under Pt III (ss 213-264) (as amended): Sch 1 para 19(6).

18 le under ibid s 51 (as amended): see the text to notes 1-11 supra.

19 Ibid Sch 1 para 19(7). See also *Split Roller Bearing Co Ltd's Licence of Right (Copyright) Application* [1996] RPC 225; *Roger Bance and R Bance & Co Ltd's Licence of Right (Copyright) Application* [1996] RPC 667; *Pioneer Oil Tools Ltd's Licence of Right (Copyright) Application* [1997] RPC 573.

20 *Roger Bance and R Bance & Co Ltd's Licence of Right (Copyright) Application* [1996] RPC 667.

21 *Split Roller Bearing Co Ltd's Licence of Right (Copyright) Application* [1996] RPC 225.

22 Copyright, Designs and Patents Act 1988 s 247(6)(b) (applied by Sch 1 para 19(2)). The comptroller has no power to make payment of back royalties a condition of whether or not a licence commences from the date of the application but he can require a term setting out a date from which such back royalties are to be paid: *Roger Bance and R Bance & Co Ltd's Licence of Right (Copyright) Application* [1996] RPC 667. As to the considerations the comptroller takes into account in settling the royalty rate payable under the licence see *Roger Bance and R Bance & Co Ltd's Licence of Right (Copyright) Application* supra; *Pioneer Oil Tools Ltd's Licence of Right (Copyright) Application* [1997] RPC 573.

23 Copyright, Designs and Patents Act 1988 Sch 1 para 19(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(v) Licences/C. COMPULSORY LICENCES/(G) Licence to Repair/205. Implied licence to repair.

(G) LICENCE TO REPAIR

205. Implied licence to repair.

A purchaser of an article has the right to do whatever is necessary to keep it in running order and to effect whatever repairs may be necessary in the most economical way possible¹. Accordingly, it is not an infringement of the copyright in any artistic works² from which the article is made to make or to have made spare parts to enable such repairs to be carried out³. Nor is it an infringement to make such spare parts in advance in order to meet the requirements of such purchasers⁴. A purchaser of a patented article has an implied licence to repair it⁵ and this licence extends to cover the copyrights in any works which may be infringed in carrying out such repairs⁶. A purchaser of bespoke software is entitled to use the source code for the purpose of removing any defects or bugs but not for the purpose of making further improvements⁷.

1 *British Leyland Motor Corpn v Armstrong Patents Co Ltd* [1986] AC 577 at 625, [1986] 1 All ER 850 at 861, HL, per Lord Bridge of Harwich, and at 643 and 875 per Lord Templeman.

2 For the meaning of 'artistic work' see PARA 75 ante. As to infringement of artistic works by copying see PARA 314 et seq post. This type of infringement is no longer actionable in respect of works made on or after 1 August 1989 owing to the operation of the Copyright, Designs and Patents Act 1988 s 51: see PARA 376 post. The 'spare parts' defence remains relevant to infringement of the copyright in artistic works made before that date: see PARA 377 post. As to the so-called 'spare parts' defence see PARA 406 post. As to the infringement of design right see PARA 526 et seq post.

3 *British Leyland Motor Corpn v Armstrong Patents Co Ltd* [1986] AC 577, [1986] 1 All ER 850, HL.

4 *British Leyland Motor Corpn v Armstrong Patents Co Ltd* [1986] AC 577, [1986] 1 All ER 850, HL. This doctrine is sometimes referred to as an implied licence to repair. In *Canon Kabushiki Kaisha v Green Cartridge Co (Hong Kong) Ltd* [1997] AC 728, [1997] FSR 817, PC, the Privy Council was of the view that the basis of the decision in *British Leyland Motor Corpn v Armstrong Patents Co Ltd* supra was that the assertion by British Leyland of its copyrights was unfair and an abuse of a de facto monopoly and that, once one departed from a case in which such factors were plain and obvious, the jurisprudential and economic basis for the doctrine was extremely fragile; it declined to extend the doctrine to 'consumables'.

5 As to this implied licence see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 507.

6 *Solar Thomson Engineering Co Ltd v Barton* [1977] RPC 537 at 550, CA.

7 *Saphena Computing Ltd v Allied Collection Agencies Ltd* [1995] FSR 616.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(6) DEALINGS WITH RIGHTS IN COPYRIGHT WORKS/(v) Licences/C. COMPULSORY LICENCES/(H) Wartime Legislation/206. Licences under wartime legislation.

(H) WARTIME LEGISLATION

206. Licences under wartime legislation.

The Comptroller General of Patents, Designs and Trade Marks may make an order granting a licence of copyright where an owner, whether a sole or a joint owner of the copyright is, or at any time since 2 September 1939 has been, an enemy or an enemy subject¹.

¹ See PARA 32 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(i) Constitution of the Tribunal/207. The Copyright Tribunal.

(7) THE COPYRIGHT TRIBUNAL

(i) Constitution of the Tribunal

207. The Copyright Tribunal.

The Tribunal established under the name of the Performing Right Tribunal by the Copyright Act 1956¹ has been renamed the Copyright Tribunal². It has been given a greatly extended jurisdiction to hear and determine disputes relating to the collective licensing of copyright works and other matters³; and it also has jurisdiction to hear and determine disputes relating to rights in performances⁴ and database right⁵.

1 See the Copyright Act 1956 s 23 (repealed).

2 Copyright, Designs and Patents Act 1988 s 145(1). The Copyright Tribunal is under the direct supervision of the Council on Tribunals: Tribunals and Inquiries Act 1992 s 1, Sch 1 para 11. As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) paras 55-57.

3 As to the jurisdiction of the Copyright Tribunal see PARA 211 post.

4 As to rights in performances generally see PARA 604 et seq post; and as to the Copyright Tribunal's jurisdiction to hear and determine disputes relating to such rights and to give consent to the exploitation of a performance in certain instances see PARA 651 et seq post.

5 As to database right see PARA 736 et seq post; and as to the Copyright Tribunal's jurisdiction to hear and determine disputes relating to database right see PARA 746 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(i) Constitution of the Tribunal/208. Membership of the Tribunal.

208. Membership of the Tribunal.

The Copyright Tribunal¹ consists of a chairman and two deputy chairmen appointed by the Lord Chancellor², after consultation with the Secretary of State³, and not less than two or more than eight ordinary members appointed by the Secretary of State⁴.

A person is not eligible for appointment as chairman or deputy chairman unless:

- 144 (1) he has a seven year general qualification⁵;
- 145 (2) he is an advocate or solicitor in Scotland of at least seven years' standing⁶;
- 146 (3) he is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years' standing⁷; or
- 147 (4) he has held judicial office⁸.

The members of the Tribunal hold and vacate office in accordance with their terms of appointment, subject to the following provisions⁹.

A member of the Tribunal may resign his office by notice in writing¹⁰ to the Secretary of State or, in the case of the chairman or a deputy chairman, to the Lord Chancellor¹¹. The Secretary of State or, in the case of the chairman or a deputy chairman, the Lord Chancellor may by notice in writing to the member concerned remove him from office if:

- 148 (a) he has become bankrupt or made an arrangement with his creditors¹²; or
- 149 (b) he is incapacitated by physical or mental illness¹³; or
- 150 (c) he is in the opinion of the Secretary of State or, as the case may be, the Lord Chancellor otherwise unable or unfit to perform his duties as member¹⁴.

A person who is the chairman or a deputy chairman of the Tribunal must vacate his office¹⁵ on the day on which he attains the age of 70 years¹⁶.

If a member of the Tribunal is by reason of illness, absence or other reasonable cause for the time being unable to perform the duties of his office, either generally or in relation to particular proceedings, a person may be appointed to discharge his duties for a period not exceeding six months¹⁷ at one time or, as the case may be, in relation to those proceedings¹⁸. The appointment must be made:

- 151 (i) in the case of the chairman or deputy chairman, by the Lord Chancellor, who must appoint a person who would be eligible for appointment to that office¹⁹; and
- 152 (ii) in the case of an ordinary member, by the Secretary of State²⁰,

and a person so appointed has during the period of his appointment, or in relation to the proceedings in question, the same powers as the person in whose place he is appointed²¹.

1 As to the Copyright Tribunal see PARA 207 ante.

2 As to the exercise of this power of appointment by the Lord Chancellor see the Constitutional Reform Act 2005 ss 85-93, 96, Sch 14 Pt 3; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. The functions of the Lord Chancellor under the Copyright, Designs and Patents Act 1988 s 145(2) (as amended) and s 146(6) (see note 14 infra) are

protected functions: see the Constitutional Reform Act 2005 s 19(5), Sch 7 para 4 head A; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

3 As to the Secretary of State see PARA 183 note 2 ante.

4 Copyright, Designs and Patents Act 1988 s 145(2) (amended by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule).

5 Copyright, Designs and Patents Act 1988 s 145(3)(a) (s 145(3) amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 73). A seven year general qualification is such a qualification within the meaning of the Courts and Legal Services Act 1990 s 71: see LEGAL PROFESSIONS vol 65 (2008) PARA 742.

6 Copyright, Designs and Patents Act 1988 s 145(3)(b) (as amended: see note 5 supra).

7 Ibid s 145(3)(c) (as amended: see note 5 supra). As from a day to be appointed, this provision is amended so as to refer to a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland of at least 7 years' standing: s 145(3)(c) (prospectively amended by the Constitutional Reform Act 2005 ss 59(5), 148(1), Sch 11 Pt 3 para 5). At the date at which this volume states the law no such day had been appointed.

8 Copyright, Designs and Patents Act 1988 s 145(3)(d) (as amended: see note 5 supra).

9 Ibid s 146(1).

10 For the meaning of 'writing' see PARA 66 note 5 ante.

11 Copyright, Designs and Patents Act 1988 s 146(2).

12 Ibid s 146(3)(a). See note 14 infra.

13 Ibid s 146(3)(b). See note 14 infra.

14 Ibid s 146(3). The Lord Chancellor may exercise his powers to remove a person under s 146(3) or to appoint a person under s 146(4) (see the text to notes 17-18 infra) only with the concurrence of the appropriate senior judge: s 146(7) (s 146(7)-(9) added by the Constitutional Reform Act 2005 ss 15(1), 148(1), Sch 4 Pt 1 paras 198, 199). The appropriate senior judge is the Lord Chief Justice of England and Wales, unless the person to be removed exercises functions wholly or mainly in Scotland, in which case it is the Lord President of the Court of Session, or the person to be removed exercises functions wholly or mainly in Northern Ireland, in which case it is the Lord Chief Justice of Northern Ireland: Copyright, Designs and Patents Act 1988 s 146(8) (as so added). The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4): see CONSTITUTIONAL LAW AND HUMAN RIGHTS) to exercise his functions under the Copyright, Designs and Patents Act 1988 s 146(7) (as added) in relation to the appointment of a person under s 146(4): s 146(9) (as so added). The Lord Chancellor must also consult the Lord Advocate before exercising his powers under s 146 (as amended): s 146(6). See note 2 supra.

15 le subject to the Judicial Pensions and Retirement Act 1993 s 26(4)-(6) (power to authorise continuance in office up to the age of 75 years): see COURTS vol 10 (Reissue) para 535.

16 Copyright, Designs and Patents Act 1988 s 146(3A) (added by the Judicial Pensions and Retirement Act 1993 s 26, Sch 6 para 49).

17 For the meaning of 'month' see PARA 185 note 18 ante.

18 Copyright, Designs and Patents Act 1988 s 146(4). See also note 14 supra.

19 Ibid s 146(5)(a).

20 Ibid s 146(5)(b).

21 Ibid s 146(5).

UPDATE

208 Membership of the Tribunal

TEXT AND NOTES 5-7--1988 Act s 145(3)(a) substituted, s 145(3)(b), (c) further amended:
Tribunals, Courts and Enforcement Act 2007 Sch 10 para 20.

NOTE 7--Appointed day is 1 October 2009: SI 2009/1604.

NOTE 14--1988 Act s 146(8) amended: Lord Chancellor (Transfer of Functions and
Supplementary Provisions) (No 2) Order 2006, SI 2006/1016.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(i) Constitution of the Tribunal/209. Financial provisions.

209. Financial provisions.

There must be paid to the members of the Copyright Tribunal¹ such remuneration, whether by way of salaries or fees, and such allowances, as the Secretary of State² with the approval of the Treasury may determine³.

The Secretary of State may appoint such staff for the Tribunal as, with the approval of the Treasury as to numbers and remuneration, he may determine⁴. The remuneration and allowances of members of the Tribunal, the remuneration of any staff, and such other expenses of the Tribunal as the Secretary of State with the approval of the Treasury may determine, must be paid out of money provided by Parliament⁵.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 As to the Secretary of State see PARA 183 note 2 ante.

3 Copyright, Designs and Patents Act 1988 s 147(1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

4 Ibid s 147(2).

5 Ibid s 147(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(i) Constitution of the Tribunal/210. Constitution for purposes of proceedings.

210. Constitution for purposes of proceedings.

For the purposes of any proceedings, the Copyright Tribunal¹ must consist of a chairman, who must be either the chairman or a deputy chairman of the Tribunal², and two or more ordinary members³.

If the members of the Tribunal dealing with any matter are not unanimous, the decision must be taken by majority vote; and if, in such a case, the votes are equal, the chairman has a further, casting vote⁴.

Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal is or are unable to continue, the Tribunal remains duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than three⁵. If the chairman is unable to continue, the chairman of the Tribunal must appoint one of the remaining members to act as chairman⁶ and appoint a suitably qualified⁷ person to attend the proceedings and advise the members on any questions of law arising⁸.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Copyright, Designs and Patents Act 1988 s 148(1)(a).

3 Ibid s 148(1)(b).

4 Ibid s 148(2).

5 Ibid s 148(3).

6 Ibid s 148(4)(a).

7 A person is 'suitably qualified' if he is, or is eligible for appointment as, a deputy chairman of the Tribunal: ibid s 148(5). As to eligibility for appointment as a deputy chairman see PARA 208 ante.

8 Ibid s 148(4)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(ii) Jurisdiction/211.
Jurisdiction of the Tribunal.

(ii) Jurisdiction

211. Jurisdiction of the Tribunal.

The Copyright Tribunal¹ has jurisdiction² to hear and determine proceedings relating to:

- 153 (1) the determination³ of the amount of equitable remuneration with respect to retransmission of a broadcast including a copyright work⁴;
- 154 (2) applications⁵ to determine the amount of equitable remuneration where rental right is transferred⁶;
- 155 (3) references⁷ of licensing schemes⁸;
- 156 (4) applications⁹ with respect to entitlement to a licence under a licensing scheme¹⁰;
- 157 (5) references or applications¹¹ with respect to licensing by a licensing body¹²;
- 158 (6) references¹³ by the Secretary of State in respect of a proposed licence or licensing scheme for excepted sound recordings¹⁴;
- 159 (7) applications or references¹⁵ with respect to use as of right of sound recordings in broadcasts¹⁶;
- 160 (8) appeals¹⁷ against orders as to coverage of licensing schemes or licences¹⁸;
- 161 (9) applications¹⁹ to settle the royalty or other sum payable for the lending of certain works²⁰;
- 162 (10) applications²¹ to settle the terms of a copyright licence available as of right²².

In addition, the Tribunal has jurisdiction:

- 163 (a) to settle the royalty in respect of revived copyright²³;
- 164 (b) to determine the royalty or other remuneration to be paid²⁴ to the trustees for the Hospital for Sick Children, Great Ormond Street, London²⁵;
- 165 (c) to settle the terms of payment for licences of right in programme listings²⁶;
- 166 (d) to hear and determine disputes relating to rights in performances²⁷; and
- 167 (e) to hear and determine disputes relating to database right²⁸.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Ie under the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

3 Ie under ibid s 73 (as substituted): see PARA 401 post.

4 Ibid s 149(za) (added by the Broadcasting Act 1996 s 138, Sch 9 para 3).

5 Ie under the Copyright, Designs and Patents Act 1988 s 93C (as added): see PARA 289 post.

6 Ibid s 149(zb) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 14(2)).

7 Ie under the Copyright, Designs and Patents Act 1988 s 118 (see PARA 225 post), s 119 (see PARA 226 post), or s 120 (see PARA 241 post).

8 Ibid s 149(a).

9 Ie under ibid s 121 (see PARA 245 post) or s 122 (see PARA 248 post).

- 10 Ibid s 149(b).
- 11 Ie under ibid s 125 (see PARA 254 post), s 126 (see PARA 258 post), or s 127 (see PARA 260 post).
- 12 Ibid s 149(c).
- 13 Ie under ibid s 128B (as added): see PARA 265 post.
- 14 Ibid s 149(ca) (added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 21(6)).
- 15 Ie under the Copyright, Designs and Patents Act 1988 s 135D (as added) (see PARA 272 post) or s 135E (as added) (see PARA 273 post).
- 16 Ibid s 149(cc) (added by the Broadcasting Act 1990 s 175(2); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).
- 17 Ie under the Copyright, Designs and Patents Act 1988 s 139: see PARA 280 post.
- 18 Ibid s 149(d).
- 19 Ie under ibid s 142 (as substituted): see PARA 284 post.
- 20 Ibid s 149(e).
- 21 Ie under ibid s 144(4): see PARA 293 post.
- 22 Ibid s 149(f).
- 23 Ie under the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 24: see PARA 297 post.
- 24 Ie under the Copyright, Designs and Patents Act 1988 s 301, Sch 6 para 5 (as amended): see PARA 299 post.
- 25 Ibid Sch 6 para 5(5) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 24(3)).
- 26 Ie under the Broadcasting Act 1990 s 176, Sch 17 para 5: see PARA 304 post.
- 27 See PARA 651 post.
- 28 See PARA 746 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iii) General Procedure/212. General power to make rules.

(iii) General Procedure

212. General power to make rules.

The Lord Chancellor¹ may, after consultation with the Secretary of State², make rules for regulating proceedings before the Copyright Tribunal³ and, subject to the approval of the Treasury⁴, as to the fees chargeable in respect of such proceedings⁵. The rules may apply in relation to the Tribunal, as respects proceedings in England and Wales, any of the provisions of Part I⁶ of the Arbitration Act 1996⁷.

Provision must be made by the rules:

- 168 (1) prohibiting the Tribunal from entertaining a reference⁸ by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent⁹;
- 169 (2) specifying the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organisation satisfying the Tribunal that he or it has a substantial interest in the matter¹⁰;
- 170 (3) requiring the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide¹¹; and
- 171 (4) limiting the time within which an appeal may be brought¹².

The rules may also make provision for:

- 172 (a) regulating or prescribing any matters incidental to or consequential upon any appeal from the Tribunal¹³ to the court on a point of law¹⁴;
- 173 (b) suspending, or authorising or requiring the Tribunal to suspend, the operation of orders of the Tribunal in cases where its decision is appealed against¹⁵;
- 174 (c) modifying in relation to an order of the Tribunal whose operation is suspended the operation of any provision of the Copyright, Designs and Patents Act 1988 as to the effect of the order¹⁶;
- 175 (d) the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Tribunal will be informed of its suspension¹⁷.

1 The functions of the Lord Chancellor under the Copyright, Designs and Patents Act 1988 s 150 (as amended) are protected functions: see the Constitutional Reform Act 2005 s 19(5), Sch 7 para 4 head A; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

2 As to the Secretary of State see PARA 183 note 2 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

5 Copyright, Designs and Patents Act 1988 s 150(1) (amended by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule). Such rules must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: Copyright,

Designs and Patents Act 1988 s 150(5). The Copyright Tribunal Rules 1989, SI 1989/1129 (as amended) have been made: see PARA 213 et seq post.

6 Ie the Arbitration Act 1996 Pt I (ss 1-84): see ARBITRATION.

7 Copyright, Designs and Patents Act 1988 s 150(2) (substituted by the Arbitration Act 1996 s 107(1), Sch 3 para 50).

8 Ie under the Copyright, Designs and Patents Act 1988 s 118 (see PARA 225 post), s 119 (see PARA 226 post), or s 120 (see PARA 241 post).

9 Ibid s 150(3)(a). The rules must make similar provision in respect of references to the Tribunal relating to licensing schemes for performers' property rights: see s 205B(3) (as added); and PARA 651 post.

10 Ibid s 150(3)(b).

11 Ibid s 150(3)(c).

12 Ibid s 152(2).

13 Ie under ibid s 152: see PARA 309 post.

14 Ibid s 150(4).

15 Ibid s 152(3)(a).

16 Ibid s 152(3)(b).

17 Ibid s 152(3)(c).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iii) General Procedure/213. Power of the Tribunal to regulate procedure.

213. Power of the Tribunal to regulate procedure.

Subject to the provisions of the Copyright, Designs and Patents Act 1988 and the Copyright Tribunal Rules 1989¹, the Copyright Tribunal² has power to regulate its own procedure³.

1 le the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended): see PARA 214 et seq post.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 Copyright Tribunal Rules 1989, SI 1989/1129, r 54. See also the Copyright Tribunal Practice Direction 1995 (as amended) (dated 7 April 2004), which gives guidance to the parties with a view to achieving a just, expeditious and economical disposal of proceedings (para 1), and covers pre-hearing procedure (paras 4-5), chairman's directions (para 6), preparation of written evidence (para 7), pre-trial review (para 8), agreement of facts and skeleton arguments (paras 9-11), bundles (para 12), procedure at the hearing (paras 13-15), power to award costs (paras 16-17), applications for consent on behalf of a performer (para 18), and draft chairman's order for directions (Schedule). The procedure is compulsory except in cases where the Tribunal otherwise directs: para 1.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iii) General Procedure/214. Office hours.

214. Office hours.

The office of the Copyright Tribunal¹ must be open between 10.00 am and 4.00 pm Monday to Friday, excluding Good Friday, Christmas Day and any day specified or proclaimed² to be a bank holiday³.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 ie under the Banking and Financial Dealings Act 1971 s 1: see TIME vol 97 (2010) PARA 321.

3 Copyright Tribunal Rules 1989, SI 1989/1129, r 52.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iii) General Procedure/215. Service of documents.

215. Service of documents.

Any notice or other document required¹ to be served on any person may be sent to him by prepaid post at his address for service, or, where no address for service has been given, at his registered office, principal place of business or last known address; and every notice or other document required to be served on the secretary of the Copyright Tribunal² may be sent by prepaid post to the secretary at the Tribunal's office³. Service of any notice or document on a successor in title or successor in interest of a party to any proceedings⁴ is effective if served or sent to him in accordance with these provisions⁵.

Any notice or other document required to be served on a licensing body⁶ or organisation which is not a body corporate⁷ may be sent to the secretary, manager or other similar officer⁸. Service of any notice or document on a party's solicitor or agent is deemed to be service on such party; and service on a solicitor or agent acting for more than one party is deemed to be service on every party for whom such a solicitor or agent acts⁹.

The Tribunal or the chairman¹⁰ may direct that service of any notice or other document be dispensed with or effected otherwise than in the manner provided¹¹.

1 le by the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 Copyright Tribunal Rules 1989, SI 1989/1129, r 50(1). As to the service of notices in a form specified by the rules see PARA 219 post.

4 'Proceedings' means proceedings in respect of a reference or an application before the Tribunal: *ibid* r 2(1).

5 *Ibid* r 50(2).

6 For the meaning of 'licensing body' see PARA 224 post.

7 As to the service of documents on a company see COMPANIES vol 14 (2009) PARA 671.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 50(3).

9 *Ibid* r 50(5).

10 'The chairman' means the chairman of the Tribunal or a deputy chairman or any other member of the Tribunal appointed to act as chairman: *ibid* r 2(1).

11 *Ibid* r 50(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iii) General Procedure/216. Time limits.

216. Time limits.

Except in the case of the time limit relating to lodging notice of appeal¹, the time for doing any act may, whether it has already expired or not, be extended:

- 176 (1) with the leave of the Copyright Tribunal² or the chairman³; or
- 177 (2) by the consent in writing⁴ of all parties, except where the Tribunal or the chairman has fixed the time by order or, if the time is prescribed⁵, has directed that it may not be extended or further extended without leave⁶.

A party in whose favour time is extended by consent under head (2) above must, as soon as may be practicable after the necessary consents have been obtained, serve notice thereof on the secretary of the Tribunal⁷.

Where the last day for the doing of any act falls on a day on which the Tribunal's office is closed⁸ and by reason thereof the act cannot be done on that day, it may be done on the next day on which the office is open⁹.

1 Ie the time limit imposed by the Copyright Tribunal Rules 1989, SI 1989/1129, r 42(1): see PARA 309 post.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 Copyright Tribunal Rules 1989, SI 1989/1129, r 51(1)(a). For the meaning of 'the chairman' see PARA 215 note 10 ante.

4 For the meaning of 'writing' see PARA 66 note 5 ante.

5 Ie by the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

6 Ibid r 51(1)(b).

7 Ibid r 51(2). As to the service of documents see PARA 215 ante.

8 As to office hours see PARA 214 ante.

9 Copyright Tribunal Rules 1989, SI 1989/1129, r 51(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iii) General Procedure/217. Failure to comply with directions.

217. Failure to comply with directions.

If any party fails to comply with any direction given¹ by the Copyright Tribunal² or the chairman³, the Tribunal may, if it considers that the justice of the case so requires, order that such party be debarred from taking any further part in the proceedings⁴ without leave of the Tribunal⁵.

1 In accordance with the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 For the meaning of 'the chairman' see PARA 215 note 10 ante.

4 For the meaning of 'proceedings' see PARA 215 note 4 ante.

5 Copyright Tribunal Rules 1989, SI 1989/1129, r 53.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iii) General Procedure/218. Fees.

218. Fees.

The prescribed fees¹ are payable in respect of applications to the Copyright Tribunal².

¹ See the fees specified in the Copyright Tribunal Rules 1989, SI 1989/1129, r 49, Sch 1 (substituted by SI 1991/201).

² Copyright Tribunal Rules 1989, SI 1989/1129, r 49. As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iii) General Procedure/219. Use of forms.

219. Use of forms.

A requirement¹ for the service of a notice in a specified form is to be taken to have been complied with if the service of the notice is in a form which is substantially in accordance with the form specified².

¹ See in the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

² Ibid reg 2(2). As to the specified forms see Sch 3 (amended by SI 1991/201; SI 2003/2498). As to service of documents see PARA 215 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iii) General Procedure/220. Costs.

220. Costs.

The Copyright Tribunal¹ may, at its discretion, at any stage of the proceedings² make any order it thinks fit in relation to the payment of costs by one party to another in respect of the whole or part of the proceedings³.

Any party against whom an order for costs is made must, if the Tribunal so directs, pay to any other party a lump sum by way of costs, or such proportion of the costs as may be just; and in the latter case the Tribunal may assess the sum to be paid, or may direct that it be assessed by the chairman⁴ or that a detailed assessment be made by a costs officer of the Supreme Court⁵.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 For the meaning of 'proceedings' see PARA 215 note 4 ante.

3 Copyright, Designs and Patents Act 1988 s 151(1); Copyright Tribunal Rules 1989, SI 1989/1129, r 48(1). The Tribunal may assess or settle the amount of the costs, or direct in what manner they are to be assessed: Copyright, Designs and Patents Act 1988 s 151(1). As to the practice in relation to costs see the Copyright Tribunal Practice Direction 1995 (as amended) (dated 7 April 2004) paras 16-17.

The Tribunal's power in relation to costs is to be exercised solely by reference to the criterion of reasonableness and is different in nature and scope from that of a court adjudicating in civil proceedings, such that the principle that costs should normally follow the event does not apply; the Tribunal's wide discretion on costs is to be exercised by taking account of, and giving due weight to, all relevant factors, including an assessment of the positions taken by both parties on the application in the light of its outcome, the terms of the initial proposals and counter-proposals, the points taken by each side at the hearing, and the time and money spent in preparing and presenting evidence and arguments: *Phonographic Performance Ltd v AEI Rediffusion Music Ltd* [1999] 2 All ER 299, sub nom *AEI Rediffusion Music Ltd v Phonographic Performance Ltd (No 2)* [1999] 1 WLR 1507, CA.

4 For the meaning of 'the chairman' see PARA 215 note 10 ante.

5 Copyright Tribunal Rules 1989, SI 1989/1129, r 48(2). As to the detailed assessment of costs see CIVIL PROCEDURE vol 12 (2009) PARA 1779.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iii) General Procedure/221. Award of interest.

221. Award of interest.

The Copyright Tribunal¹ may in certain circumstances² award simple interest at such rate and for such period, beginning not earlier than the relevant date³ and ending not later than the date of the order, as it thinks reasonable in the circumstances⁴.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 In the cases where the Tribunal makes: (1) a direction under the Copyright, Designs and Patents Act 1988 s 123(3) (see PARA 244 post), so far as relating to a licence for communicating a work to the public; (2) a direction under s 128(3) (see PARA 263 post), so far as so relating; (3) an order under s 135D(1) (as added) (see PARA 272 post); and (4) an order under s 135F (as added) (see PARA 274 post) confirming or varying an order under s 135D(1) (as added): s 151A(1)(a)-(d) (s 151A added by the Broadcasting Act 1996 s 139(2), (3); and the Copyright, Designs and Patents Act 1988 s 151A(1)(a) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 7).

3 The relevant date means: (1) in relation to a direction under the Copyright, Designs and Patents Act 1988 s 123(3), the date on which the reference was made; (2) in relation to a direction under s 128(3), the date on which the reference or application was made; (3) in relation to an order under s 135D(1) (as added), the date on which the first payment under s 135C(2) (as added) (see PARA 197 ante) became due; and (4) in relation to an order under s 135F (as added), the date on which the application was made: s 151A(2)(a)-(d) (as added: see note 2 supra). The Copyright, Designs and Patents Act 1988 s 151A (as added) does not apply in any case where the reference or application to the Tribunal was made before 1 November 1996: Broadcasting Act 1996 s 139(2).

4 Copyright, Designs and Patents Act 1988 s 151A(1) (as added: see note 2 supra). This in effect overrules the decision in *Association of Independent Radio Companies Ltd v Phonographic Performance Ltd (British Broadcasting Corpn intervening)* [1994] RPC 143 (where the Tribunal held that the Copyright, Designs and Patents Act 1988 s 135D(2) (as added) (see PARA 272 post) did not give it the power to award interest).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iii) General Procedure/222. Proof of orders.

222. Proof of orders.

A document purporting to be a copy of an order of the Copyright Tribunal¹ and to be certified by the chairman to be a true copy is, in any proceedings, sufficient evidence of the order unless the contrary is proved².

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Copyright, Designs and Patents Act 1988 s 151(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/A. REFERENCES/223. Licensing schemes subject to the Tribunal's control.

(iv) References and Applications in relation to Licensing Schemes

A. REFERENCES

223. Licensing schemes subject to the Tribunal's control.

The jurisdiction¹ of the Copyright Tribunal² extends to licensing schemes³ which are operated by licensing bodies⁴ and cover works of more than one author⁵, so far as they relate to licences for:

- 178 (1) copying⁶ the work⁷;
- 179 (2) rental⁸ or lending⁹ of copies of the work to the public¹⁰;
- 180 (3) performing¹¹, showing or playing the work in public¹²; or
- 181 (4) communicating the work to the public¹³,

and references to a licensing scheme are to be construed accordingly¹⁴.

The Tribunal has no jurisdiction over licences under which the grantee in his turn has the right to grant sub-licences¹⁵.

1 le under the Copyright, Designs and Patents Act 1988 ss 118-123: see PARA 225 et seq post.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 For the meaning of 'licensing scheme' see PARA 224 post.

4 For the meaning of 'licensing body' see PARA 224 post.

5 For the meaning of 'author' see PARA 110 ante. As to references to 'licences or licensing schemes covering works of more than one author' see PARA 224 note 5 post.

6 For the meaning of 'copy' see PARA 314 post.

7 Copyright, Designs and Patents Act 1988 s 117(a) (s 117 substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 15(1), (2)).

8 For the meaning of 'rental' see PARA 323 post.

9 For the meaning of 'lending' see PARA 323 post.

10 Copyright, Designs and Patents Act 1988 s 117(b) (as substituted: see note 7 supra).

11 For the meaning of 'performance' see PARA 324 post.

12 Copyright, Designs and Patents Act 1988 s 117(c) (as substituted: see note 7 supra).

13 Ibid s 117(d) (as substituted (see note 7 supra); and further substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 4(4)). For the meaning of 'communication to the public' see PARA 326 post. As to the modification of the Copyright, Designs and Patents Act 1988 s 117 (as substituted) in the case of publication right see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(3)(b); and PARA 500 post.

14 Copyright, Designs and Patents Act 1988 s 117 (as substituted: see note 7 supra).

The International Convention for the Protection of Literary and Artistic Works (Berne, 9 September 1886; 77 BFSP 22; C 5167) (see PARA 452 post) prohibits compulsory licensing and for this reason the Tribunal's jurisdiction is restricted to the control of licensing schemes operated by licensing bodies which cover the work of more than one author.

15 *Reditune Ltd v Performing Right Society Ltd* [1981] FSR 165 (a decision relating to the Performing Right Tribunal as it then was).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/A. REFERENCES/224. Meanings of 'licensing scheme' and 'licensing body'.

224. Meanings of 'licensing scheme' and 'licensing body'.

'Licensing scheme' means a scheme setting out:

- 182 (1) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant copyright licences¹; and
- 183 (2) the terms on which licences would be granted in those classes of case²,

and, for this purpose, 'scheme' includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name³.

'Licensing body' means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner⁴ of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author⁵.

1 Copyright, Designs and Patents Act 1988 s 116(1)(a). In this context, 'copyright licences' means licences to do, or authorise the doing of, any of the acts restricted by copyright: s 116(3). For the meaning of 'copyright' see PARA 57 ante; and for the meaning of 'acts restricted by the copyright' see PARA 311 post.

2 Ibid s 116(1)(b).

3 Ibid s 116(1). See *British Phonographic Industry Ltd v Mechanical Copyright Protection Society Ltd (No 2)* [1993] EMLR 86.

4 As to prospective ownership of copyright see PARA 162 ante.

5 Copyright, Designs and Patents Act 1988 s 116(2). References to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only: (1) a single collective work or collective works of which the authors are the same; or (2) works made by, or by the employees of or commissioned by, a single individual, firm, company or group of companies; and, for this purpose, 'group of companies' means a holding company and its subsidiaries within the meaning of the Companies Act 1985 s 736 (as substituted): Copyright, Designs and Patents Act 1988 s 116(4). 'Collective work' means a work of joint authorship or a work in which there are distinct contributions by different authors or in which works or parts of works of different authors are incorporated: s 178. For the meaning of 'author' see PARA 110 ante; and for the meaning of 'work of joint authorship' see PARA 113 ante. As to licensing bodies generally see PARA 182 ante.

Section 116(4) does not apply to publication right: see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(c); and PARA 500 post. As to the modification of the Copyright, Designs and Patents Act 1988 s 116(2) in the case of publication right see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(3)(b); and PARA 500 post.

UPDATE

224 Meanings of 'licensing scheme' and 'licensing body'

NOTE 5--Reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159 (see COMPANIES vol 14) (2009) PARA 25): Copyright, Designs and Patents Act 1988 s 116(4) (amended by SI 2009/1941).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/A. REFERENCES/225. Reference of proposed licensing scheme to the Tribunal.

225. Reference of proposed licensing scheme to the Tribunal.

The terms of a licensing scheme¹ proposed to be operated by a licensing body² may be referred to the Copyright Tribunal³ by an organisation claiming to be representative⁴ of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case⁵.

The Tribunal must first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature⁶. If the Tribunal decides to entertain the reference, it must consider the matter referred and make such order, confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable⁷ in the circumstances⁸. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁹.

1 For the meaning of 'licensing scheme' see PARA 224 ante.

2 For the meaning of 'licensing body' see PARA 224 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 As to objections to the validity of such a claim see PARA 229 post.

5 Copyright, Designs and Patents Act 1988 s 118(1). As to such references see *British Amusement Catering Trades Association v Phonographic Performance Ltd* [1992] RPC 149; *British Phonographic Industry Ltd v Mechanical Copyright Protection Society Ltd (No 2)* [1993] EMLR 86.

6 Copyright, Designs and Patents Act 1988 s 118(2). As to pre-hearing procedure see the Copyright Tribunal Practice Direction 1995 (as amended) (dated 7 April 2004) paras 4-5. In *British Phonographic Industry Ltd v Mechanical Copyright Protection Society Ltd* (11 July 1990, unreported), the reference was rejected on the ground that there was no licence scheme in operation.

7 As to the criteria of reasonableness see PARA 266 et seq post.

8 Copyright, Designs and Patents Act 1988 s 118(3).

9 Ibid s 118(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/A. REFERENCES/226. Reference of licensing scheme to the Tribunal.

226. Reference of licensing scheme to the Tribunal.

If, while a licensing scheme¹ is in operation, a dispute arises between the operator of the scheme and a person claiming that he requires a licence in a case of a description to which the scheme applies² or an organisation claiming to be representative of such persons³, that person or organisation may refer the scheme to the Copyright Tribunal⁴, in so far as it relates to cases of that description⁵. A scheme which has been so referred to the Tribunal remains in operation until proceedings on the reference are concluded⁶.

The Tribunal must consider the matter in dispute and make such order, confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable⁷ in the circumstances⁸. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁹.

1 For the meaning of 'licensing scheme' see PARA 224 ante.

2 Copyright, Designs and Patents Act 1988 s 119(1)(a).

3 Ibid s 119(1)(b).

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 Copyright, Designs and Patents Act 1988 s 119(1).

6 Ibid s 119(2).

7 As to the criteria of reasonableness see PARA 266 et seq post.

8 Copyright, Designs and Patents Act 1988 s 119(3).

9 Ibid s 119(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/A. REFERENCES/227. Procedure on reference of proposed or actual licensing scheme.

227. Procedure on reference of proposed or actual licensing scheme.

Proceedings¹ in relation to a reference with respect to a licensing scheme² must be commenced by the service³ on the secretary of the Copyright Tribunal⁴ by the applicant⁵ of a notice in the prescribed form⁶, together with a statement of the applicant's case⁷. As soon as practicable after receipt of the notice, the secretary must serve a copy of the same, with a copy of the applicant's statement, on the operator of the licensing scheme named in the notice⁸.

In the case of a reference of a proposed licensing scheme⁹, the Tribunal must, as soon as practicable after the receipt of the applicant's notice, decide whether to entertain the reference and may for that purpose, at its discretion, allow representations in writing to be made by the applicant or the operator of the scheme or both; and if, after considering the reference and representations (if any), the Tribunal:

- 184 (1) decides to entertain the reference, it must give such directions as to the taking of any steps required or authorised¹⁰, or as to any further matter, including any order as to costs, as the Tribunal thinks fit¹¹; or
- 185 (2) declines to entertain the reference, it must direct that no further proceedings be taken by any party in connection with the reference, otherwise than in relation to any order for costs which the Tribunal may¹² make¹³.

The decision of the Tribunal must be in writing and must include a statement of its reasons; and the secretary of the tribunal must serve a copy thereof on the applicant and the operator of the licensing scheme¹⁴.

1 For the meaning of 'proceedings' see PARA 215 note 4 ante.

2 For the meaning of 'licensing scheme' see PARA 224 ante.

3 As to the service of documents see PARA 215 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 'Applicant' means a person who or organisation which has made a reference or an application to the Tribunal: Copyright Tribunal Rules 1989, SI 1989/1129, r 2(1).

6 For the prescribed form of notice see *ibid* r 3(1)(a), Sch 3 Form 1. As to the use of forms see PARA 219 ante.

7 *Ibid* r 3(1). As to the contents of the applicant's statement of case see the Copyright Tribunal Practice Direction 1995 (as amended) (dated 7 April 2004) para 5.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 3(2).

9 *Ie* a reference under the Copyright, Designs and Patents Act 1988 s 118: see PARA 225 ante.

10 *Ie* required or authorised under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

11 *Ibid* r 3(3)(a). As to costs see PARA 220 ante.

12 *Ie* under *ibid* r 48: see PARA 220 ante.

13 *Ibid* r 3(3)(b).

14 Ibid r 3(4). As to appeals against decisions of the Tribunal see PARA 309 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/A. REFERENCES/228. Advertisement of reference.

228. Advertisement of reference.

Except where the Copyright Tribunal¹ has declined² to entertain a reference of a proposed licensing scheme³, or the chairman⁴ in any other case otherwise directs, the secretary of the Tribunal must give notice by advertisement, in such manner as the chairman may think fit, of every reference with respect to licensing schemes made⁵ to the Tribunal⁶.

An advertisement must state:

- 186 (1) the names and addresses of the applicant⁷ and any organisation or person on whom a copy of the notice of reference has been⁸ served⁹;
- 187 (2) the nature of the reference¹⁰;
- 188 (3) the time, not being less than 21 days¹¹ from the date of publication of the advertisement, within which an objection to the applicant's credentials may¹² be made¹³ and any other organisation or person may apply¹⁴ to the Tribunal to be made a party to the proceedings¹⁵.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 See the Copyright Tribunal Rules 1989, SI 1989/1129, r 3(3)(b); and PARA 227 ante.

3 Is a reference under the Copyright, Designs and Patents Act 1988 s 118: see PARA 225 ante. For the meaning of 'licensing scheme' see PARA 224 ante.

4 For the meaning of 'the chairman' see PARA 215 note 10 ante.

5 Is under the Copyright, Designs and Patents Act 1988 s 118 or s 119 (see PARA 226 ante).

6 Copyright Tribunal Rules 1989, SI 1989/1129, r 5(1).

7 For the meaning of 'applicant' see PARA 227 note 5 ante.

8 Is in accordance with the Copyright Tribunal Rules 1989, SI 1989/1129, r 3: see PARA 227 ante.

9 Ibid r 5(2)(a).

10 Ibid r 5(2)(b).

11 As to the extension of time limits see PARA 216 ante.

12 Is in accordance with the Copyright Tribunal Rules 1989, SI 1989/1129, r 6: see PARA 229 post.

13 Ibid r 5(2)(c)(i).

14 Is in accordance with ibid r 7: see PARA 230 post.

15 Ibid r 5(2)(c)(ii).

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229. Objections to applicant's credentials.

Any organisation or person intending to object to the applicant's¹ credentials² must, within the time specified in the advertisement³, serve⁴ on the secretary of the Copyright Tribunal⁵ a notice of objection in the prescribed form⁶. The Tribunal or the chairman⁷ may, however, give leave, subject to such conditions as the Tribunal or the chairman may think fit, to serve such notice notwithstanding the expiration of the time so specified⁸.

If notice of objection to the applicant's credentials has been so served on the secretary or if the Tribunal intends to make such objection of its own motion, the secretary must, on the expiration of the time specified in the advertisement⁹, serve on every party to the proceedings a notice of the same, and the proceedings are stayed, unless the Tribunal or the chairman otherwise directs on the grounds that no reasonable cause of objection has been disclosed, from the date of such notice until further order¹⁰. As soon as practicable after service of such notice, the chairman must give directions for the making of representations in writing for the purpose of the consideration by the Tribunal of the objection¹¹. After consideration of the representations by the Tribunal, the chairman may, if he thinks fit, give the applicant, any objector and any other party an opportunity of being heard at a hearing to be appointed by the chairman¹².

If, after considering the objection and any written or oral representations, the Tribunal is not satisfied of the applicant's credentials, it must direct that no further proceedings be taken by any party in connection with the reference, otherwise than in relation to any order for costs which the Tribunal may¹³ make¹⁴.

If, after considering the objection and any written or oral representations, the Tribunal is satisfied of the applicant's credentials, it must direct that the reference proceed; and the Tribunal or the chairman may give such consequential directions as to the taking of any steps required or authorised¹⁵, or as to any further matter, as the Tribunal or the chairman may think fit¹⁶.

When the Tribunal has arrived at its decision on the objection, or where the objection has been withdrawn or is not proceeded with, the secretary must serve notice of the same on every party to the proceedings¹⁷.

1 For the meaning of 'applicant' see PARA 227 note 5 ante.

2 'Credentials' means the validity of an organisation's claim to be representative of a class of persons: Copyright Tribunal Rules 1989, SI 1989/1129, r 2(1).

3 I.e. the time specified under *ibid* r 5(2)(c): see PARA 228 ante.

4 As to the service of documents see PARA 215 ante.

5 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

6 Copyright Tribunal Rules 1989, SI 1989/1129, r 6(1). For the prescribed form see r 6(1), Sch 3 Form 4. As to the use of forms see PARA 219 ante.

7 For the meaning of 'the chairman' see PARA 215 note 10 ante.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 6(1).

- 9 See note 3 *supra*.
- 10 Copyright Tribunal Rules 1989, SI 1989/1129, r 6(2).
- 11 *Ibid* r 6(3).
- 12 *Ibid* r 6(3).
- 13 *Ie* under *ibid* r 48: see PARA 220 *ante*.
- 14 *Ibid* r 6(4).
- 15 *Ie* under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).
- 16 *Ibid* r 6(5). As to failure to comply with directions see PARA 217 *ante*.
- 17 *Ibid* r 6(6).

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230. Intervener's application.

An application to the Copyright Tribunal¹ by a person or organisation to be made a party to a reference² may be made by serving³ on the secretary of the Tribunal, within the time specified⁴ in the advertisement, a notice of intervention in the prescribed form⁵, together with a statement of his interest⁶. The Tribunal or the chairman⁷ may, however, give leave, subject to such conditions as the Tribunal or the chairman may think fit, to serve such notice notwithstanding the expiration of the time so specified⁸.

As soon as practicable after receipt of a notice so served the secretary must serve a copy of the notice on every other party to the proceedings⁹ and must serve on the intervener¹⁰ a copy of the applicant's reference and statement of case, together with any other notice of intervention which has been served on him¹¹.

- 1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.
- 2 I.e. a reference referred to in the Copyright Tribunal Rules 1989, SI 1989/1129, r 3: see PARA 227 ante.
- 3 As to the service of documents see PARA 215 ante.
- 4 I.e. specified under the Copyright Tribunal Rules 1989, SI 1989/1129, r 5(2)(c): see PARA 228 ante.
- 5 For the prescribed form of notice of intervention see *ibid* r 7(1), Sch 3 Form 5 (substituted by SI 1991/201). As to the use of forms see PARA 219 ante.
- 6 Copyright Tribunal Rules 1989, SI 1989/1129, r 7(1).
- 7 For the meaning of 'the chairman' see PARA 215 note 10 ante.
- 8 Copyright Tribunal Rules 1989, SI 1989/1129, r 7(1).
- 9 *Ibid* r 7(2)(a). For the meaning of 'proceedings' see PARA 215 note 4 ante.
- 10 'Intervener' means a person or organisation who has applied to be made a party to proceedings: *ibid* r 2(1).
- 11 *Ibid* r 7(2)(b).

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231. Objections to intervener's credentials.

Any party intending to object to an intervener's credentials¹ must, within 14 days² of being served with a copy of the notice of intervention³, serve⁴ on the secretary of the Copyright Tribunal⁵ a notice of objection in the prescribed form⁶. The secretary must, as soon as practicable after receipt of any notice of objection, serve on every other party to the proceedings⁷ a copy of the same⁸.

If the Tribunal intends of its own motion to object to an intervener's credentials, the secretary must, on the expiration of the time specified⁹, serve on the intervener and every other party notice of that intention with a statement of the Tribunal's reasons for the objection¹⁰.

An objection to an intervener's credentials does not operate, subject to any direction to the contrary that the chairman¹¹ may give¹², as a stay of the proceedings and must be considered by the Tribunal at the same time as the reference in question¹³.

1 For the meaning of 'intervener' see PARA 230 note 10 ante. 'Credentials' means the possession by an intervener of a substantial interest in the matter in dispute: Copyright Tribunal Rules 1989, SI 1989/1129, r 2(1).

2 As to the extension of time limits see PARA 216 ante.

3 I.e. under the Copyright Tribunal Rules 1989, SI 1989/1129, r 7: see PARA 230 ante.

4 As to the service of documents see PARA 215 ante.

5 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

6 Copyright Tribunal Rules 1989, SI 1989/1129, r 8(1). For the prescribed form of notice see r 8(1), Sch 3 Form 6 (substituted by SI 1991/201). As to the use of forms see PARA 219 ante.

7 For the meaning of 'proceedings' see PARA 215 note 4 ante.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 8(2).

9 I.e. the time specified in the advertisement under *ibid* r 5(2)(c): see PARA 228 ante.

10 *Ibid* r 8(3).

11 For the meaning of 'the chairman' see PARA 215 note 10 ante.

12 I.e. under the Copyright Tribunal Rules 1989, SI 1989/1129, r 11(2)(vii): see PARA 234 post.

13 *Ibid* r 8(4).

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232. Written response by operator of scheme or intervener.

Except where otherwise directed¹, the operator of the licensing scheme² must, within 28 days³ of the service on him⁴ of a copy of the applicant's⁵ statement of case, serve⁶ on the secretary of the Copyright Tribunal⁷ a written answer to the applicant's statement setting out his case⁸.

Within 21 days of the expiration of the time specified⁹, an intervener¹⁰ must serve on the secretary a statement of the case he intends to make¹¹.

The secretary must serve a copy of such case or answer on every other party to the proceedings¹² within ten days of the receipt thereof¹³.

1 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 3(3)(a): see PARA 227 ante.

2 For the meaning of 'licensing scheme' see PARA 224 ante.

3 As to the extension of time limits see PARA 216 ante.

4 Ie in accordance with the Copyright Tribunal Rules 1989, SI 1989/1129, r 3(2): see PARA 227 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 As to the service of documents see PARA 215 ante.

7 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 9(1).

9 Ie the time specified in the advertisement under *ibid* r 5(2)(c): see PARA 228 ante.

10 For the meaning of 'intervener' see PARA 230 note 10 ante.

11 Copyright Tribunal Rules 1989, SI 1989/1129, r 9(2).

12 For the meaning of 'proceedings' see PARA 215 note 4 ante.

13 Copyright Tribunal Rules 1989, SI 1989/1129, r 9(3).

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233. Amendment of statement of case and answer.

A party may at any time amend his statement of case or answer by serving¹ on the secretary of the Copyright Tribunal² the amended statement or answer³. However, no amended statement of case or answer may be served, without the leave of the chairman⁴, after such date as the chairman may⁵ direct⁶.

On being served with an amended statement of case or answer, the secretary must as soon as practicable serve a copy of it on every other party⁷.

1 As to the service of documents see PARA 215 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 Copyright Tribunal Rules 1989, SI 1989/1129, r 10(1).

4 For the meaning of 'the chairman' see PARA 215 note 10 ante.

5 le under the Copyright Tribunal Rules 1989, SI 1989/1129, r 11(2)(iii): see PARA 234 post.

6 Ibid r 10(3).

7 Ibid r 10(2).

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234. Chairman's directions.

Upon the expiration of the time specified¹ for the service on the secretary of the Copyright Tribunal² of a statement of case or answer, the chairman³ must appoint a date and place for the attendance of the parties for the purpose of his giving directions as to the further conduct of the proceedings⁴; and the secretary must serve⁵ on every party, and every person whose application⁶ to intervene has not been determined, not less than 21 days' notice⁷ of such date and place⁸.

On the appointed day the chairman must afford every party attending the appointment an opportunity of being heard and, after considering any representations made orally or in writing, give such directions as he thinks fit with a view to the just, expeditious and economical disposal of the proceedings; and, without prejudice to the generality of the above, he may give directions as to:

- 189 (1) the date and place of any oral hearing requested by any party or which the chairman for any reason considers necessary, and the procedure (including the number of representatives each party may appoint for the purpose of such hearing and the timetable (including the allocation of time for the making of representations by each party) to be followed at such a hearing⁹;
- 190 (2) the procedure to be followed with regard to the submission and exchange of written arguments¹⁰;
- 191 (3) the date after which no amended statement of case or answer may be served without leave¹¹;
- 192 (4) the preparation and service by each party, or any one party if all other parties agree, of a schedule setting out the issues to be determined by the Tribunal and brief particulars of the contentions of each party in relation thereto¹²;
- 193 (5) the admission of any facts or documents, and the disclosure and inspection of documents¹³;
- 194 (6) the giving of evidence on affidavit¹⁴; and
- 195 (7) the consideration by the Tribunal of whether any objection made to an intervener's credentials¹⁵ should operate as a stay of the proceedings¹⁶.

The chairman may postpone or adjourn to a later date to be appointed by him the giving of any such directions and, at any time after directions have been so given, the chairman may, whether or not any application on that behalf has been made¹⁷, give such further directions as he may think fit¹⁸.

If any party fails to comply with any direction so given or order so made¹⁹, the chairman may give²⁰ such consequential directions as may be necessary and may order such a party to pay any costs occasioned by his default²¹.

1 le the time specified by the Copyright Tribunal Rules 1989, SI 1989/1129, r 9(2): see PARA 232 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 For the meaning of 'the chairman' see PARA 215 note 10 ante.

4 For the meaning of 'proceedings' see PARA 215 note 4 ante.

- 5 As to the service of documents see PARA 215 ante.
- 6 le under the Copyright Tribunal Rules 1989, SI 1989/1129, r 7(1): see PARA 230 ante.
- 7 As to the extension of time limits see PARA 216 ante.
- 8 Copyright Tribunal Rules 1989, SI 1989/1129, r 11(1). As to the procedure in relation to a chairman's directions see the Copyright Tribunal Practice Direction 1995 (as amended) (dated 7 April 2004) para 6. The directions are confined to the disposal of the proceedings or any issue or matter in the proceedings and the Tribunal does not have the power under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended) to give substantive directions: *Video Visuals Ltd v Video Performance Ltd* (23 June 1993, unreported).
- 9 Copyright Tribunal Rules 1989, SI 1989/1129, r 11(2)(i).
- 10 Ibid r 11(2)(ii).
- 11 Ibid r 11(2)(iii).
- 12 Ibid r 11(2)(iv).
- 13 Ibid r 11(2)(v).
- 14 Ibid r 11(2)(vi). As to affidavits see CIVIL PROCEDURE vol 11 (2009) PARA 989 et seq.
- 15 For the meaning of 'intervener' see PARA 230 note 10 ante; and for the meaning of 'credentials' see PARA 231 note 1 ante.
- 16 Copyright Tribunal Rules 1989, SI 1989/1129, r 11(2)(vii).
- 17 le under ibid r 12: see PARA 235 ante.
- 18 Ibid r 11(3).
- 19 le under ibid r 11 or r 12 (see PARA 235 post).
- 20 le without prejudice to the making of any order under ibid r 53: see PARA 217 ante.
- 21 Ibid r 11(4). As to costs generally see PARA 220 ante.

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235. Application for directions.

A party may, at any stage of the proceedings¹, apply to the Copyright Tribunal² for directions with respect to any issue or other matter in the proceedings and, except where the Tribunal, whether generally or in any particular case, otherwise directs or it is otherwise provided³, every such application must be disposed of by the chairman⁴.

The application must be made by the service⁵ of a notice on the secretary of the Tribunal, stating the grounds on which it is made, and, unless the notice is accompanied by the written consent of all parties to the proceedings, the party making the application must serve a copy of the application on every other party to the proceedings and inform the secretary of the date of such service⁶. Any party who objects to the application may, within seven days⁷ after being served with the copy thereof, serve a notice of objection, stating the grounds of objection, on the secretary; and he must serve a copy of the same on the applicant and any other party to the proceedings and inform the secretary of the date of such service⁸.

After considering the application and any objection to it and, if he considers it necessary, after having given all parties concerned an opportunity of being heard, the chairman may make such order in the matter as he thinks fit and give such consequential directions as may be necessary⁹.

1 For the meaning of 'proceedings' see PARA 215 note 4 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 Ie by the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

4 Ibid r 12(1). For the meaning of 'the chairman' see PARA 215 note 10 ante.

5 As to the service of documents see PARA 215 ante.

6 Copyright Tribunal Rules 1989, SI 1989/1129, r 12(2).

7 As to the extension of time limits see PARA 216 ante.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 12(3).

9 Ibid r 12(4). As to failure to comply with directions see PARA 217 ante.

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236. Consolidation of proceedings.

Where there is pending before the Copyright Tribunal¹ more than one reference² relating to the same licensing scheme³, the chairman⁴ may, if he thinks fit, either of his own motion or on an application⁵, order that some or all of the references are to be considered together, and may give such consequential directions as may be necessary⁶. The chairman must not, however, make such an order of his own motion without giving all parties concerned a reasonable opportunity of objecting to the proposed order⁷.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Ie more than one reference under the Copyright, Designs and Patents Act 1988 s 118 (see PARA 225 ante), s 119 (see PARA 226 ante), or s 120 (see PARA 241 post).

3 For the meaning of 'licensing scheme' see PARA 224 ante.

4 For the meaning of 'the chairman' see PARA 215 note 10 ante.

5 Ie an application made under the Copyright Tribunal Rules 1989, SI 1989/1129, r 12: see PARA 235 ante.

6 Ibid r 13. As to failure to comply with directions see PARA 217 ante.

7 Ibid r 13.

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237. Procedure and evidence at hearing.

Every party to a reference which is considered at an oral hearing before the Copyright Tribunal¹ is entitled to attend the hearing, to address the Tribunal, to give evidence and call witnesses². Except where the Tribunal or the chairman³ otherwise orders in the case of an application for directions⁴, the hearing must be in public⁵.

Evidence before the Tribunal must be given orally or, if the parties so agree or the Tribunal or the chairman so orders, by affidavit; but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent for examination and cross-examination⁶.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Copyright Tribunal Rules 1989, SI 1989/1129, r 14(1).

3 For the meaning of 'the chairman' see PARA 215 note 10 ante.

4 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 12: see PARA 235 ante.

5 Ibid r 14(2).

6 Ibid r 14(3). As to affidavits see CIVIL PROCEDURE Vol 11 (2009) PARA 989 et seq.

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238. Representation and rights of audience.

A party may at any stage of the proceedings appoint some other person to act as agent for him in the proceedings¹. The appointment of an agent must be made in writing and is not effective until notice thereof has been served² on the secretary of the Copyright Tribunal³, and a copy of the same has been served on every other party and the secretary has been informed of the date of such service⁴. Only one agent may be appointed to act for a party at any one time⁵.

For the purpose of service on a party of any document, or the taking of any step required or authorised⁶, an agent appointed by a party is deemed to continue to have authority to act for such a party until the secretary and every other party have received notice of the termination of his appointment⁷.

A party or an agent appointed by him may: (1) be represented at any hearing, whether before the Tribunal or the chairman⁸, by a barrister or a solicitor, or by any other person allowed by the Tribunal or the chairman to appear on his behalf; or (2) may, save in the case of a corporation or unincorporated body, appear in person⁹.

¹ Copyright Tribunal Rules 1989, SI 1989/1129, r 15(1). For the meaning of 'proceedings' see PARA 215 note 4 ante.

² As to the service of documents see PARA 215 ante.

³ As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

⁴ Copyright Tribunal Rules 1989, SI 1989/1129, r 15(2).

⁵ Ibid r 15(3).

⁶ ie under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

⁷ Ibid r 15(4).

⁸ For the meaning of 'the chairman' see PARA 215 note 10 ante.

⁹ Copyright Tribunal Rules 1989, SI 1989/1129, r 15(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/A. REFERENCES/239. Withdrawal of reference.

239. Withdrawal of reference.

The applicant¹ may withdraw his reference² at any time before it has been finally disposed of by serving³ a notice thereof on the secretary of the Copyright Tribunal⁴; but such withdrawal is without prejudice to the Tribunal's power to make an order as to the payment of costs incurred up to the time of service of the notice⁵. The applicant must serve a copy of the notice on every other party to the proceedings and inform the secretary of the date of such service⁶.

Any party to the proceedings on whom a copy of the notice of withdrawal is so served may, within 14 days⁷ of such service, apply to the Tribunal for an order that, notwithstanding such withdrawal, the reference should proceed to be determined by the Tribunal; and if the Tribunal decides, at its discretion, to proceed with the reference, it may for that purpose substitute such party as the applicant to the proceedings and give such consequential directions as may be necessary⁸.

1 For the meaning of 'applicant' see PARA 227 note 5 ante.

2 Ie made under the Copyright Tribunal Rules 1989, SI 1989/1129, r 3: see PARA 227 ante.

3 As to the service of documents see PARA 215 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 Copyright Tribunal Rules 1989, SI 1989/1129, r 16(1). As to costs generally see PARA 220 ante.

6 Ibid r 16(1).

7 As to the extension of time limits see PARA 216 ante.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 16(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/A. REFERENCES/240. Decision of the Tribunal.

240. Decision of the Tribunal.

The final decision of the Copyright Tribunal¹ on a reference² must be given in writing and must include a statement of the Tribunal's reasons; and the secretary of the Tribunal must as soon as practicable serve³ on every party to the proceedings⁴ a copy of the Tribunal's decision⁵. The secretary must cause a copy of the Tribunal's decision to be made available at the office for public inspection during office hours⁶ and, if the chairman⁷ so directs, must cause to be advertised, in such manner as the chairman thinks fit, short particulars of the decision⁸.

Except where the operation of the order is suspended⁹, the order of the Tribunal takes effect from such date, and remains in force for such period, as is specified in the order¹⁰.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 3: see PARA 227 ante.

3 As to the service of documents see PARA 215 ante.

4 For the meaning of 'proceedings' see PARA 215 note 4 ante.

5 Copyright Tribunal Rules 1989, SI 1989/1129, r 17. As to the effect of the Tribunal's decision see PARA 244 post.

6 As to the office hours of the Tribunal see PARA 214 ante.

7 For the meaning of 'the chairman' see PARA 215 note 10 ante.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 18.

9 Ie under ibid r 42 (see PARAS 309-310 post) or r 43 (see PARA 310 post).

10 Ibid r 19.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/A. REFERENCES/241. Further reference of scheme to the Tribunal.

241. Further reference of scheme to the Tribunal.

Where the Copyright Tribunal¹ has on a previous reference of a licensing scheme² made an order with respect to the scheme³, then, while the order remains in force⁴:

- 196 (1) the operator of the scheme⁵;
- 197 (2) a person claiming that he requires a licence in a case of the description to which the order applies⁶; or
- 198 (3) an organisation claiming to be representative of such persons⁷,

may refer the scheme again to the Tribunal so far as it relates to cases of that description⁸. A scheme which has been referred to the Tribunal remains in operation until proceedings on the reference are concluded⁹.

A licensing scheme may not, except with the special leave¹⁰ of the Tribunal, be referred again to the Tribunal in respect of the same description of cases within 12 months¹¹ from the date of the order on the previous reference¹² or, if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order¹³.

The Tribunal must consider the matter in dispute and make such order, confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable¹⁴ in the circumstances¹⁵. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine¹⁶.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 I.e. under the Copyright, Designs and Patents Act 1988 s 118 (see PARA 225 ante), s 119 (see PARA 226 ante), s 120 (see the text and notes 3-16 infra), or s 128A (as added) (see PARA 264 post). For the meaning of 'licensing scheme' see PARA 224 ante.

3 As to the procedure for obtaining such an order see PARA 227 et seq ante.

4 As to the period for which an order remains in force see PARA 240 ante.

5 Copyright, Designs and Patents Act 1988 s 120(1)(a).

6 Ibid s 120(1)(b).

7 Ibid s 120(1)(c).

8 Ibid s 120(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 21(4)). As to the procedure on the reference see PARA 243 post.

9 Copyright, Designs and Patents Act 1988 s 120(3).

10 As to applications for special leave see PARA 242 post.

11 For the meaning of 'month' see PARA 185 note 18 ante.

12 Copyright, Designs and Patents Act 1988 s 120(2)(a).

13 Ibid s 120(2)(b).

14 As to the criteria of reasonableness see PARA 266 et seq post.

15 Copyright, Designs and Patents Act 1988 s 120(4). In *Working Men's Club and Institute Union v Performing Right Society Ltd* [1992] RPC 227, the Tribunal held that it could not review its order so as to give effect to an agreement between the parties but could vary its decision only by a further reference. The Tribunal may not vary the scheme save in a manner which relates to the matters which have been argued before it, except with the consent of the parties: *R v Performing Right Tribunal, ex p Performing Right Society Ltd* (1982) (unreported).

16 Copyright, Designs and Patents Act 1988 s 120(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/A. REFERENCES/242. Application for special leave.

242. Application for special leave.

An application for the special leave of the Copyright Tribunal¹ on a further reference² must be made by the service³ on the secretary of the Tribunal by the applicant⁴ of a notice in the prescribed form⁵, together with a statement of the grounds for the application⁶. The applicant must serve a copy of the notice and statement on every person who was a party to the reference or application on which the Tribunal made the last previous order with respect to the licensing scheme⁷. Within 14 days⁸ of the service on him of such notice, any such party may make representations in writing to the Tribunal regarding the application for special leave; and he must serve a copy of any such representations on the applicant and inform the Secretary of the date of such service⁹.

The Tribunal, after considering the application and any representations and, if it considers it necessary, after having given the applicant and any such party who has made such representations an opportunity of being heard, must grant or dismiss the application, with such order as to costs¹⁰, as it may think fit; and if it grants the application, it may give such directions as to the taking of any steps required or authorised¹¹, or as to any further matter as the Tribunal thinks fit¹². The decision of the Tribunal must be in writing and must include a statement of its reasons; and the secretary must serve a copy thereof on the applicant and any party who made representations¹³.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 I.e. under the Copyright, Designs and Patents Act 1988 s 120 (as amended): see PARA 241 ante.

3 As to the service of documents see PARA 215 ante.

4 For the meaning of 'applicant' see PARA 227 note 5 ante.

5 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 4(1), Sch 3 Form 3 (substituted by SI 1991/201). As to the use of forms see PARA 219 ante.

6 Copyright Tribunal Rules 1989, SI 1989/1129, r 4(1).

7 Ibid r 4(1). For the meaning of 'licensing scheme' see PARA 224 ante.

8 As to the extension of time limits see PARA 216 ante.

9 Copyright Tribunal Rules 1989, SI 1989/1129, r 4(2).

10 As to costs generally see PARA 220 ante.

11 I.e. under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

12 Ibid r 4(3). As to failure to comply with directions see PARA 217 ante.

13 Ibid r 4(4).

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243. Procedure on further reference.

Proceedings¹ in relation to a further reference of a licensing scheme² must be commenced by the service³ on the secretary of the Copyright Tribunal⁴ by the applicant⁵ of a notice in the prescribed form⁶, together with a statement of the applicant's case⁷. As soon as practicable after receipt of the notice, the secretary must serve a copy of the same, with a copy of the applicant's statement, on the operator of the licensing scheme named in the notice and on every person who was a party to the proceedings when the Tribunal's order was made⁸. Thereafter the procedure is the same as on a reference of a proposed or an existing licensing scheme⁹.

The decision of the Tribunal must be in writing and must include a statement of its reasons; and where, on the further reference, the Tribunal has varied the licensing scheme, there must be annexed to the decision a copy of the scheme as so varied¹⁰. The secretary must as soon as practicable serve a copy of the decision on every party to the proceedings¹¹.

1 For the meaning of 'proceedings' see PARA 215 note 4 ante.

2 I.e. under the Copyright, Designs and Patents Act 1988 s 120 (as amended): see PARA 241 ante. For the meaning of 'licensing scheme' see PARA 224 ante.

3 As to the service of documents see PARA 215 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 3(1)(a), Sch 3 Form 1. As to the use of forms see PARA 219 ante.

7 Ibid r 3(1).

8 Ibid r 3(2).

9 See PARAS 227-239 ante.

10 Copyright Tribunal Rules 1989, SI 1989/1129, r 17. As to the effect of the Tribunal's decision see PARA 244 post.

11 Ibid r 17.

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244. Effect of the Tribunal's order as to licensing scheme.

A licensing scheme¹ which has been confirmed or varied by the Copyright Tribunal² is in force or, as the case may be, remains in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force³.

While the order is in force, a person who, in a case of a class to which the order applies:

- 199 (1) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained⁴; and
- 200 (2) complies with the other terms applicable to such a licence under the scheme⁵,

is in the same position as regards infringement of copyright⁶ as if he had at all material times been the holder of a licence granted by the owner of the copyright⁷ in question in accordance with the scheme⁸.

The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation⁹.

1 For the meaning of 'licensing scheme' see PARA 224 ante.

2 See under the Copyright, Designs and Patents Act 1988 s 118 (reference of terms of proposed scheme: see PARA 225 ante), s 119 (reference of existing scheme: see PARA 226 ante), or s 120 (as amended) (further reference of existing scheme: see PARA 241 ante). As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 Ibid s 123(1).

4 Ibid s 123(2)(a). See also note 9 infra.

5 Ibid s 123(2)(b).

6 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq post.

7 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

8 Copyright, Designs and Patents Act 1988 s 123(2).

9 Ibid s 123(3). If such a direction is made, any necessary repayments, or further repayments, must be made in respect of charges already paid (s 123(3)(a)); and the reference in s 123(2)(a) (see head (1) in the text) to the charges payable under the scheme is to be construed as a reference to the charges so payable by virtue of the order (s 123(3)(b)). No such direction may be made where s 123(4) applies: s 123(3). An order of the Tribunal under s 119 (see PARA 226 ante) or s 120 (as amended) (see PARA 241 ante) made with respect to a scheme which is certified for the purposes of s 143 (as amended) (see PARA 183 ante) has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal: s 123(4). As to an award of interest, in so far as relating to a licence for communicating a work to the public, see PARA 221 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/B. APPLICATIONS/245. Application for grant of licence in connection with licensing scheme.

B. APPLICATIONS

245. Application for grant of licence in connection with licensing scheme.

A person who claims, in a case covered by a licensing scheme¹, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal².

A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme:

- 201 (1) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted³; or
- 202 (2) proposes terms for a licence which are unreasonable⁴,

may apply to the Copyright Tribunal⁵. A case is to be regarded as excluded from a licensing scheme for these purposes if the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way⁶.

If the Tribunal is satisfied that the claim is well-founded, it must make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable⁷ in the circumstances⁸. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁹.

1 For the meaning of 'licensing scheme' see PARA 224 ante.

2 Copyright, Designs and Patents Act 1988 s 121(1). As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante. As to the procedure on such applications see PARA 246 post. The Tribunal may have sole jurisdiction to hear such disputes: cf *Phonographic Performance Ltd v Grosvenor Leisure Ltd* [1984] FSR 24 (decision of the Performing Right Tribunal as it then was). If the applicant is in doubt as to whether or not the case is one which is covered by, or is one which is excluded by, the scheme, he should apply under both heads in the alternative as it appears that subsequent amendment of the application is not permissible: Case PRT39/84 *Limes Country Club Ltd v Phonographic Performance Ltd (Musicians Union intervening)* (10 December 1984, unreported) (decided under the Copyright Act 1956 s 27 (repealed) and rules made thereunder).

3 Copyright, Designs and Patents Act 1988 s 121(2)(a).

4 Ibid s 121(2)(b). On such an application the burden of proof is on the applicant to show that the particular licence offered to him is unreasonable on any footing: Case PRT18/64 *Isle of Man Broadcasting Co Ltd v Phonographic Performance Ltd* (29 May 1965, unreported) (decision of the Performing Right Tribunal as it then was). If the Tribunal decides to make an order, it must bear in mind the interests of all the parties including the interveners: *Isle of Man Broadcasting Co Ltd v Phonographic Performance Ltd* supra.

5 Copyright, Designs and Patents Act 1988 s 121(2). As to the procedure on such applications see PARA 246
post. See also Case PRT39/84 *Limes Country Club Ltd v Phonographic Performance Ltd (Musicians Union*
intervening) (10 December 1984, unreported); and note 2 *supra*.

6 Copyright, Designs and Patents Act 1988 s 121(3).

7 As to the criteria of reasonableness see PARA 266 *et seq post*.

8 Copyright, Designs and Patents Act 1988 s 121(4).

9 *Ibid* s 121(5).

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246. Procedure on application.

Proceedings¹ in relation to an application for the grant of a licence in connection with a licensing scheme² must be commenced by the service³ on the secretary of the Copyright Tribunal⁴ by the applicant⁵ of a notice in the prescribed form⁶, together with a statement of the applicant's case⁷.

Thereafter the procedure is the same as on a reference of a proposed or an existing licensing scheme⁸.

1 For the meaning of 'proceedings' see PARA 215 note 4 ante.

2 I.e. an application under the Copyright, Designs and Patents Act 1988 s 121: see PARA 245 ante. For the meaning of 'licensing scheme' see PARA 224 ante.

3 As to the service of documents see PARA 215 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 3(1)(b), Sch 3 Form 2. As to the use of forms see PARA 219 ante.

7 Ibid r 3(1).

8 See PARA 227 et seq ante.

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247. Effect of order as to entitlement of licence.

Where the Copyright Tribunal¹ has made an order as to the applicant's entitlement to a licence under a licensing scheme² and the order remains in force, the person in whose favour the order is made:

- 203 (1) if he pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained³; and
- 204 (2) if he complies with the other terms specified in the order⁴,

is in the same position as regards infringement of copyright⁵ as if he had at all material times been the holder of a licence granted by the owner of the copyright⁶ in question on the terms specified in the order⁷.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 I.e. under the Copyright, Designs and Patents Act 1988 s 121: see PARA 245 ante. For the meaning of 'licensing scheme' see PARA 224 ante.

3 Copyright, Designs and Patents Act 1988 s 123(5)(a).

4 Ibid s 123(5)(b).

5 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq post.

6 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

7 Copyright, Designs and Patents Act 1988 s 123(5).

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248. Application for review of order as to entitlement to licence.

Where the Copyright Tribunal¹ has made an order² that a person is entitled to a licence under a licensing scheme³, the operator of the scheme or the original applicant may apply to the Tribunal to review its order⁴. An application may not be made, except with the special leave of the Tribunal⁵, within 12 months⁶ from the date of the order or of the decision on a previous such application⁷ or, if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous such application is due to expire within 15 months of that decision, until the last three months before the expiry date⁸.

The Tribunal must on an application for review confirm or vary its order as the Tribunal may determine to be reasonable⁹ having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case¹⁰.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Under the Copyright, Designs and Patents Act 1988 s 121: see PARA 245 ante.

3 For the meaning of 'licensing scheme' see PARA 224 ante.

4 Copyright, Designs and Patents Act 1988 s 122(1). As to the procedure on such an application see PARA 250 post.

5 As to the application for special leave see PARA 249 post.

6 For the meaning of 'month' see PARA 185 note 18 ante.

7 Copyright, Designs and Patents Act 1988 s 122(2)(a).

8 Ibid s 122(2)(b).

9 As to the criteria of reasonableness see PARA 266 et seq post.

10 Copyright, Designs and Patents Act 1988 s 122(3).

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249. Application for special leave.

The procedure on an application¹ for the special leave of the Copyright Tribunal² for the review of an order as to entitlement to a licence in connection with a licensing scheme³ is the same as on a further reference of a licensing scheme⁴.

1 le under the Copyright, Designs and Patents Act 1988 s 122: see PARA 248 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 For the meaning of 'licensing scheme' see PARA 224 ante.

4 See the Copyright Tribunal Rules 1989, SI 1989/1129, r 4; and PARA 242 ante.

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250. Procedure on application for review.

Proceedings¹ in relation to an application for the review of an order as to entitlement to a licence in connection with a licensing scheme² must be commenced by the service³ on the secretary of the Copyright Tribunal⁴ by the applicant⁵ of a notice in the prescribed form⁶, together with a statement of the applicant's case⁷. As soon as practicable after receipt of the notice, the secretary must serve a copy of the same, with a copy of the applicant's statement, on the operator of the licensing scheme named in the notice and on every person who was a party to the proceedings when the Tribunal's order was made⁸. Thereafter the procedure is the same as on a reference of a proposed or an existing licensing scheme⁹.

The final decision of the Tribunal must be given in writing and must include a statement of its reasons; and where, on the application for review, the Tribunal has varied the licensing scheme, there must be annexed to the decision a copy of the scheme as so varied¹⁰. The secretary must, as soon as practicable, serve a copy of the Tribunal's decision on every party to the proceedings¹¹.

1 For the meaning of 'proceedings' see PARA 215 note 4 ante.

2 I.e. under the Copyright, Designs and Patents Act 1988 s 122: see PARA 248 ante. For the meaning of 'licensing scheme' see PARA 224 ante.

3 As to the service of documents see PARA 215 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 3(1)(b), Sch 3 Form 2. As to the use of forms see PARA 219 ante.

7 Ibid r 3(1).

8 Ibid r 3(2).

9 See PARA 227 et seq ante.

10 Copyright Tribunal Rules 1989, SI 1989/1129, r 17.

11 Ibid r 17.

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251. Consolidation of proceedings.

Where there is pending before the Copyright Tribunal¹ more than one application relating to the same licensing scheme², the chairman³ may, if he thinks fit, either of his own motion or on an application⁴, order that some or all of the applications must be considered together, and may give such consequential directions as may be necessary⁵. The chairman must not, however, make such an order of his own motion without giving all parties concerned a reasonable opportunity of objecting to the proposed order⁶.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Ie more than one application under the Copyright, Designs and Patents Act 1988 s 121 (see PARA 245 ante) or s 122 (see PARA 248 ante). For the meaning of 'licensing scheme' see PARA 224 ante.

3 For the meaning of 'the chairman' see PARA 215 note 10 ante.

4 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 12: see PARA 235 ante.

5 Ibid r 13. As to failure to comply with directions see PARA 217 ante.

6 Ibid r 13.

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252. Withdrawal of application.

The applicant¹ may withdraw his application² at any time before it has been finally disposed of by serving³ a notice thereof on the secretary of the Copyright Tribunal⁴; but such withdrawal is without prejudice to the Tribunal's power to make an order as to the payment of costs incurred up to the time of service of the notice⁵. The applicant must serve a copy of the notice on every other party to the proceedings and must inform the secretary of the date of such service⁶.

Any party to the proceedings on whom a copy of the notice of withdrawal is so served may, within 14 days⁷ of such service, apply to the Tribunal for an order that, notwithstanding such withdrawal, the application should proceed to be determined by the Tribunal; and if the Tribunal decides, at its discretion, to proceed with the application, it may for that purpose substitute such party as the applicant to the proceedings and give such consequential directions as may be necessary⁸.

1 For the meaning of 'applicant' see PARA 227 note 5 ante.

2 Ie made under the Copyright Tribunal Rules 1989, SI 1989/1129, r 3: see PARA 246 ante.

3 As to the service of documents see PARA 215 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 Copyright Tribunal Rules 1989, SI 1989/1129, r 16(1). As to costs generally see PARA 220 ante.

6 Ibid r 16(1).

7 As to the extension of time limits see PARA 216 ante.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 16(2).

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C. REFERENCES AND APPLICATIONS IN RELATION TO LICENCES

253. Licences subject to the Tribunal's control.

In addition to its jurisdiction in relation to licensing schemes¹, the Copyright Tribunal² has jurisdiction³ over licences which are granted by a licensing body⁴ otherwise than in pursuance of a licensing scheme and cover works of more than one author⁵, so far as they authorise:

- 205 (1) copying⁶ the work⁷;
- 206 (2) rental or lending⁸ of copies of the work to the public⁹;
- 207 (3) performing¹⁰, showing or playing the work in public¹¹; or
- 208 (4) communicating the work to the public¹²,

and references to a licence are to be construed accordingly¹³.

1 As to such jurisdiction in relation to licensing schemes see PARA 225 et seq ante. For the meaning of 'licensing scheme' see PARA 224 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 Ie under the Copyright, Designs and Patents Act 1988 ss 125-128: see PARA 254 et seq post.

4 For the meaning of 'licensing body' see PARA 224 ante.

5 For the meaning of 'author' see PARA 110 ante. As to references to licensing schemes covering works of more than one author see PARA 224 note 5 ante.

6 For the meaning of 'copy' see PARA 314 post. As to the infringement of copyright by copying a work see PARA 314 et seq post.

7 Copyright, Designs and Patents Act 1988 s 124(a) (s 124 substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 15(1), (3)).

8 For the meanings of 'rental' and 'lending', and as to the infringement of copyright by rental and lending of copies of a work to the public, see PARA 323 post.

9 Copyright, Designs and Patents Act 1988 s 124(b) (as substituted: see note 7 supra).

10 For the meaning of 'performance', and as to the infringement of copyright by performing, showing or playing a work in public, see PARA 324 post.

11 Copyright, Designs and Patents Act 1988 s 124(c) (as substituted: see note 7 supra).

12 Ibid s 124(d) (as substituted (see note 7 supra); and further substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 4(4)). For the meaning of 'communication to the public', and as to the infringement of copyright by communicating a work to the public, see PARA 326 post.

13 Copyright, Designs and Patents Act 1988 s 124 (as substituted: see note 7 supra). As to the modification of s 124 (as substituted) in the case of publication right see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(3)(b); and PARA 500 post.

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254. Reference to the Tribunal of proposed licence.

The terms on which a licensing body¹ proposes to grant a licence² may be referred to the Copyright Tribunal³ by the prospective licensee⁴.

The Tribunal must first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature⁵. If the Tribunal decides to entertain the reference, it must consider the terms of the proposed licence and make such order, confirming or varying the terms, as it may determine to be reasonable⁶ in the circumstances⁷. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁸.

1 For the meaning of 'licensing body' see PARA 224 ante.

2 As to the licences to which the Copyright, Designs and Patents Act 1988 s 125 applies see PARA 253 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 Copyright, Designs and Patents Act 1988 s 125(1).

5 Ibid s 125(2). As to pre-hearing procedure see the Copyright Tribunal Practice Direction 1995 (as amended) (dated 7 April 2004) para 4. See also PARA 225 note 6 ante.

6 As to the criteria of reasonableness see PARA 266 et seq post.

7 Copyright, Designs and Patents Act 1988 s 125(3). See *Romeike and Curtice Ltd v Newspaper Licensing Agency Ltd* [1999] EMLR 142, in which the Tribunal considered a term in the agency's licence to be unreasonable and substituted an alternative term. As to applications to review an order see PARA 260 post.

8 Copyright, Designs and Patents Act 1988 s 125(4). As to the effect of an order see PARA 263 post.

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255. Procedure on reference of proposed licence.

Proceedings with respect to licensing by licensing bodies¹ must be commenced by the service² on the secretary of the Copyright Tribunal³ by the applicant⁴ of a notice in the prescribed form⁵, together with a statement of the applicant's case⁶. As soon as practicable after receipt of the notice, the secretary must serve a copy of the same, with a copy of the applicant's statement, on the licensing body named in the notice so served⁷.

The Tribunal must, as soon as practicable after the receipt of the applicant's notice, decide whether to entertain the reference and may for that purpose, at its discretion, allow representations in writing to be made by the applicant or the licensing body or both; and if, after considering the reference and representations (if any), the Tribunal:

- 209 (1) decides to entertain the reference, it must give such directions as to the taking of any steps required or authorised⁸, or as to any further matter, including any order as to costs, as the Tribunal thinks fit⁹; or
- 210 (2) declines to entertain the reference, it must direct that no further proceedings be taken by any party in connection with the reference, otherwise than in relation to any order for costs which the Tribunal may¹⁰ make¹¹.

The decision of the Tribunal must be in writing and must include a statement of its reasons; and the secretary must serve a copy thereof on the applicant and the licensing body¹².

1 For the meaning of 'licensing body' see PARA 224 ante.

2 As to the service of documents see PARA 215 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 For the meaning of 'applicant' see PARA 227 note 5 ante.

5 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 20(1)(a), Sch 3 Form 7. As to the use of forms see PARA 219 ante.

6 Ibid r 20(1).

7 Ibid r 20(2).

8 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

9 Ibid r 20(3)(a). The provisions of r 20(3) apply in the case of references under the Copyright, Designs and Patents Act 1988 s 125 (see PARA 254 ante) only. As to failure to comply with directions see PARA 217 ante. As to costs generally see PARA 220 ante.

10 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 48: see PARA 220 ante.

11 Ibid r 20(3)(b). See also note 9 supra.

12 Ibid r 20(4).

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256. Procedure and decision of the Tribunal.

Except where otherwise directed¹, the licensing body² or other person must, within 21 days³ of the service of the notice⁴, serve⁵ on the secretary of the Copyright Tribunal⁶ his written answer to the applicant's⁷ statement, and must serve a copy of the same on the applicant and inform the secretary of the date of such service⁸. Thereafter the procedure is the same as on a reference of a licensing scheme to the Tribunal⁹.

The final decision of the Tribunal on a reference must be given in writing and must include a statement of the Tribunal's reasons; and there must be annexed to the decision a copy of the order and, where the Tribunal has varied a previous order, a copy of that order as varied¹⁰. The secretary must as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision¹¹.

1 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 20(3): see PARA 255 ante.

2 For the meaning of 'licensing body' see PARA 224 ante.

3 As to the extension of time limits see PARA 216 ante.

4 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 20(2): see PARA 255 ante.

5 As to the service of documents see PARA 215 ante.

6 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

7 For the meaning of 'applicant' see PARA 227 note 5 ante.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 22(1).

9 See *ibid* r 22(2). Rules 10-16 (see PARA 233 et seq ante) apply to the proceedings as they apply to proceedings in respect of a reference or an application under r 3 (see PARA 227 ante): r 22(2).

10 *Ibid* r 22(3).

11 *Ibid* r 22(4). Rules 18 and 19 (see PARA 240 ante) apply with regard to the publication and the effective date of the decision: r 22(4).

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257. Intervener's application.

A person who or organisation which claims to have a substantial interest in the proceedings¹ may apply to the Copyright Tribunal² to be made a party to that reference by serving³ on the secretary of the Tribunal a notice of intervention in the prescribed form⁴, together with a statement of his or its interest⁵.

As soon as practicable after receipt of such a notice the secretary must serve a copy of the notice on every other party to the proceedings⁶ and serve on the intervener⁷ a copy of the applicant's reference and statement of case, together with any other notice of intervention which has been served on him⁸. Within 14 days⁹ of the service on him of the notice, a party intending to object to an intervener's credentials¹⁰ must serve on the secretary a notice of objection in the prescribed form¹¹ and must serve a copy of the same on the intervener and inform the secretary of the date of such service¹².

The Tribunal, after considering the intervener's application and any objection to his credentials and, if it considers it necessary, after having given the intervener and any party who has served a notice of objection an opportunity of being heard, must, if satisfied of the substantial interest of the intervener, grant the application and may thereupon give such directions or further directions as to the taking of any steps required or authorised¹³ or as to any further matter as may be necessary to enable the intervener to participate in the proceedings as a party¹⁴.

Subject to any direction to the contrary that the chairman¹⁵ may give¹⁶, an objection to an intervener's credentials does not operate as a stay of proceedings and must be considered by the Tribunal at the same time as the reference in question¹⁷.

1 I.e a reference under the Copyright Tribunal Rules 1989, SI 1989/1129, r 20: see PARA 255 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 As to the service of documents see PARA 215 ante.

4 For the prescribed form of notice of intervention see the Copyright Tribunal Rules 1989, SI 1989/1129, r 23(1), Sch 3 Form 5 (substituted by SI 1991/201). As to the use of forms see PARA 219 ante.

5 Copyright Tribunal Rules 1989, SI 1989/1129, r 23(1).

6 Ibid r 23(2)(a).

7 For the meaning of 'intervener' see PARA 230 note 10 ante.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 23(2)(b).

9 As to the extension of time limits see PARA 216 ante.

10 For the meaning of 'credentials' see PARA 231 note 1 ante.

11 For the prescribed form of notice of objection see the Copyright Tribunal Rules 1989, SI 1989/1129, r 23(3), Sch 3 Form 6 (substituted by SI 1991/201).

12 Copyright Tribunal Rules 1989, SI 1989/1129, r 23(3).

- 13 le under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).
- 14 Ibid r 23(4). As to failure to comply with directions see PARA 217 ante.
- 15 For the meaning of 'the chairman' see PARA 215 note 10 ante.
- 16 le under the Copyright Tribunal Rules 1989, SI 1989/1129, r 11(2)(vii): see PARA 234 ante.
- 17 Ibid r 23(5).

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258. Reference to the Tribunal of expiring licence.

A licensee under a licence¹ which is due to expire, by effluxion of time or as a result of notice given by the licensing body², may apply to the Copyright Tribunal³ on the ground that it is unreasonable in the circumstances that the licence should cease to be in force⁴. Such an application may not be made until the last three months⁵ before the licence is due to expire⁶. A licence in respect of which a reference has been made to the Tribunal remains in operation until proceedings on the reference are concluded⁷.

If the Tribunal finds the application well-founded, it must make an order declaring that the licensee is to continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable⁸ in the circumstances⁹. An order of the Tribunal may be so made so as to be in force indefinitely or for such period as the Tribunal may determine¹⁰.

1 As to the licences to which the Copyright, Designs and Patents Act 1988 s 126 applies see PARA 253 ante.

2 For the meaning of 'licensing body' see PARA 224 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 Copyright, Designs and Patents Act 1988 s 126(1).

5 For the meaning of 'month' see PARA 185 note 18 ante.

6 Copyright, Designs and Patents Act 1988 s 126(2).

7 Ibid s 126(3).

8 As to the criteria for reasonableness see PARA 266 et seq post.

9 Copyright, Designs and Patents Act 1988 s 126(4). As to applications to review an order see PARA 260 post.

10 Ibid s 126(5). As to the effect of an order see PARA 263 post.

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259. Procedure on reference of expiring licence.

The procedure on a reference¹ to the Copyright Tribunal² of an expiring licence is the same as on a reference of a proposed licence³.

1 le under the Copyright, Designs and Patents Act 1988 s 126: see PARA 258 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 See PARAS 255-257 ante.

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260. Application for review of order as to licence.

Where the Copyright Tribunal¹ has made an order relating to a proposed licence² or an expiring licence³, the licensing body⁴ or the person entitled to the benefit of the order may apply to the Tribunal to review its order⁵.

An application may not be made, except with the special leave⁶ of the Tribunal, within 12 months⁷ from the date of the order or of the decision on a previous such application⁸ or, if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous such application is due to expire within 15 months of that decision, until the last three months before the expiry date⁹.

The Tribunal must on an application for review confirm or vary its order as the Tribunal may determine to be reasonable¹⁰ in the circumstances¹¹.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Ie an order under the Copyright, Designs and Patents Act 1988 s 125: see PARA 254 ante.

3 Ie an order under ibid s 126: see PARA 258 ante.

4 For the meaning of 'licensing body' see PARA 224 ante.

5 Copyright, Designs and Patents Act 1988 s 127(1). As to the application see PARA 262 post. Section 127 also applies where the Tribunal has made an order under s 128B (as added) (see PARA 265 post) where that order did not relate to a licensing scheme: s 127(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 21(5)).

6 As to the application for special leave see PARA 261 post.

7 For the meaning of 'month' see PARA 185 note 18 ante.

8 Copyright, Designs and Patents Act 1988 s 127(2)(a).

9 Ibid s 127(2)(b).

10 As to the criteria of reasonableness see PARA 266 et seq post.

11 Copyright, Designs and Patents Act 1988 s 127(3). As to appeals against orders of the Tribunal see PARA 309 post.

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261. Application for special leave.

An application¹ for the special leave of the Copyright Tribunal² for the review of its order³ must be made by the service⁴ on the secretary of the Tribunal by the applicant⁵ of a notice in the prescribed form⁶ together with a statement of the grounds for the application⁷. The applicant must serve a copy of the notice and statement on every person who was a party to the reference on which the Tribunal made the last previous order with respect to the licence⁸. Within 14 days⁹ of the service on him of such notice, any such party may make representations in writing to the Tribunal regarding the application for special leave; and he must serve a copy of any such representations on the applicant and inform the secretary of the date of such service¹⁰.

The Tribunal, after considering the application and any representations and, if it considers it necessary, after having given the applicant and any such party who has made such representations an opportunity of being heard, must grant or dismiss the application, with such order as to costs¹¹, as it may think fit; and if it grants the application, it may give such directions as to the taking of any steps required or authorised¹² or as to any further matter as the Tribunal thinks fit¹³. The decision of the Tribunal must be in writing and must include a statement of its reasons; and the secretary must serve a copy thereof on the applicant and any party who made representations¹⁴.

1 Ie an application under the Copyright, Designs and Patents Act 1988 s 127(2): see PARA 260 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 Ie under the Copyright, Designs and Patents Act 1988 s 127 (as amended): see PARA 260 ante.

4 As to the service of documents see PARA 215 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 21(1), Sch 3 Form 3 (substituted by SI 1991/201). As to the use of forms see PARA 219 ante.

7 Copyright Tribunal Rules 1989, SI 1989/1129, r 21(1).

8 Ibid r 21(1).

9 As to the extension of time limits see PARA 216 ante.

10 Copyright Tribunal Rules 1989, SI 1989/1129, r 21(2).

11 As to costs generally see PARA 220 ante.

12 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

13 Ibid r 21(3). As to failure to comply with directions see PARA 217 ante.

14 Ibid r 21(4).

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262. Procedure on application for review of order as to licence.

Proceedings¹ with respect to an application² for the review of an order as to a licence must be commenced by the service³ on the secretary of the Copyright Tribunal⁴ by the applicant⁵ of a notice in the prescribed form⁶, together with a statement of the applicant's case⁷. As soon as practicable after receipt of the notice, the secretary must serve a copy of the same, with a copy of the applicant's statement, on any person named in the notice⁸.

Thereafter the procedure on such an application is the same as on a reference of a proposed licence⁹.

1 For the meaning of 'proceedings' see PARA 215 note 4 ante.

2 Ie under the Copyright, Designs and Patents Act 1988 s 127 (as amended): see PARA 260 ante.

3 As to the service of documents see PARA 215 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 20(1)(b), Sch 3 Form 8. As to the use of forms see PARA 219 ante.

7 Ibid r 20(1).

8 Ibid r 20(2).

9 See PARAS 255-257 ante.

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263. Effect of order of the Tribunal as to licence.

Where the Copyright Tribunal¹ has made an order on the reference of a proposed licence² or an expiring licence³ and the order remains in force, the person entitled to the benefit of the order, if he:

- 211 (1) pays to the licensing body⁴ any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained⁵; and
- 212 (2) complies with the other terms specified in the order⁶,

is in the same position as regards infringement of copyright⁷ as if he had at all material times been the holder of a licence granted by the owner of the copyright⁸ in question on the terms specified in the order⁹.

The benefit of the order may be assigned¹⁰, in the case of an order in respect of a proposed licence, if assignment is not prohibited under the terms of the Tribunal's order¹¹ and, in the case of an order in respect of an expiring licence, if assignment was not prohibited under the terms of the original licence¹².

The Tribunal may direct that an order in respect of a proposed licence or an expiring licence, or an order¹³ varying such an order, so far as it varies the amount of charges payable, is to have effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire¹⁴.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Ie an order under the Copyright, Designs and Patents Act 1988 s 125: see PARA 254 ante.

3 Ie an order under ibid s 126: see PARA 258 ante.

4 For the meaning of 'licensing body' see PARA 224 ante.

5 Copyright, Designs and Patents Act 1988 s 128(1)(a).

6 Ibid s 128(1)(b).

7 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq post.

8 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

9 Copyright, Designs and Patents Act 1988 s 128(1).

10 As to assignment generally see PARA 160 et seq ante.

11 Copyright, Designs and Patents Act 1988 s 128(2)(a).

12 Ibid s 128(2)(b).

13 Ie an order under ibid s 127 (as amended): see PARA 260 ante.

14 Ibid s 128(3). If such a direction is made: (1) any necessary repayments, or further payments, must be made in respect of charges already paid (s 128(3)(a)); and (2) the reference in s 128(1)(a) (see head (1) in the text) to the charges payable in accordance with the order is to be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order (s 128(3)(b)). As to an award of interest so far as relating to a licence for communicating a work to the public see *PARA 221 ante*.

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264. Notification of licence or licensing scheme for excepted sound recordings.

The following provisions only apply to a proposed licence¹ or licensing scheme that will authorise the playing in public of excepted sound recordings² included in broadcasts³, in circumstances where⁴ the playing in public of such recordings would otherwise infringe the copyright⁵ in them⁶.

A licensing body must notify the Secretary of State⁷ of the details of any proposed licence or licensing scheme for excepted sound recordings before it comes into operation⁸. A licence or licensing scheme which has been so notified may not be operated by the licensing body until 28 days have elapsed since that notification⁹.

The Secretary of State must take into account certain matters and then either refer the licence or licensing scheme to the Copyright Tribunal¹⁰ for a determination of whether the licence or licensing scheme is reasonable in the circumstances¹¹, or notify the licensing body that he does not intend to refer the licence or licensing scheme to the Tribunal¹². However, if the Secretary of State becomes aware: (1) that a licensing body has failed to notify¹³ him of a licence or licensing scheme before it comes into operation¹⁴; or (2) that a licence or licensing scheme has been operated within 28 days of a notification¹⁵, this provision does not apply, but the Secretary of State may at any time refer the licence or licensing scheme to the Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or may notify the licensing body that he does not intend to refer it to the Tribunal¹⁶.

The matters which the Secretary of State must take into account are:

- 213 (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the specified factors¹⁷;
- 214 (b) any written representations received by the Secretary of State¹⁸;
- 215 (c) previous determinations of the Tribunal¹⁹;
- 216 (d) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and the terms of those schemes or licences²⁰; and
- 217 (e) the extent to which the licensing body has consulted any person who would be affected by the proposed licence or licensing scheme, or organisations representing such persons, and the steps, if any, it has taken as a result²¹.

A proposed licence or licensing scheme that must be notified²² to the Secretary of State may only be referred to the Tribunal under the provisions relating to proposed licensing schemes²³ or licences²⁴ before such notification takes place²⁵; and a proposed licensing scheme that has been notified to the Secretary of State may only be referred to the Tribunal²⁶ after the Secretary of State has notified the licensing body that he does not intend to refer the licensing scheme to the Tribunal²⁷.

Nothing in the above provisions is to be taken to prejudice any right to make a reference or application to the Tribunal in respect of a further reference of a scheme to the Tribunal²⁸, the grant of a licence in connection with a scheme²⁹, the review of an order as to entitlement to a licence³⁰, an expiring licence³¹ or the review³² of an order as to a licence³³.

1 'Licence' means a licence granted by a licensing body otherwise than in pursuance of a licensing scheme and which covers works of more than one author: Copyright, Designs and Patents Act 1988 s 128A(13) (s 128A added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 21(3)). For the meanings of 'licensing body' and 'licensing scheme' see PARA 224 ante. For the meaning of 'author' see PARA 110 ante. As to references to licensing schemes covering works of more than one author see PARA 224 note 5 ante.

2 For the meaning of 'excepted sound recording' see PARA 400 note 4 post.

3 For the meaning of 'broadcast' see PARA 89 ante.

4 le by reason of the exclusion of excepted sound recordings from the Copyright, Designs and Patents Act 1988 s 72(1) (as amended): see PARA 400 post.

5 For the meaning of 'copyright' see PARA 57 ante.

6 Copyright, Designs and Patents Act 1988 s 128A(1) (as added: see note 1 supra). Section 128A(as added) applies to modifications to an existing licence or licensing scheme as it applies to a proposed licence or licensing scheme: s 128A(12) (as so added).

7 As to the Secretary of State see PARA 183 note 2 ante.

8 Copyright, Designs and Patents Act 1988 s 128A(2) (as added: see note 1 supra).

9 Ibid s 128A(3) (as added: see note 1 supra).

10 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

11 Copyright, Designs and Patents Act 1988 s 128A(4)(a) (as added: see note 1 supra). As to the consideration of the matter by the Tribunal see PARA 265 post.

12 Ibid s 128A(4)(b) (as added: see note 1 supra).

13 le under ibid s 128A(2) (as added): see the text to notes 7-8 supra.

14 Ibid s 128A(5)(a) (as added: see note 1 supra).

15 Ibid s 128A(5)(b) (as added: see note 1 supra). The notification referred to in the text is a notification under s 128A(2) (as added): see the text to notes 7-8 supra.

16 Ibid s 128A(5) (as added: see note 1 supra).

17 Ibid s 128A(6)(a) (as added: see note 1 supra). The specified factors are: (1) the extent to which the broadcasts to be shown or played by a potential licensee in circumstances mentioned in s 128A(1) (as added) (see the text to notes 1-6 supra) are likely to include excepted sound recordings (s 128A(7)(a) (as so added)); (2) the size and the nature of the audience that a licence or licensing scheme would permit to hear the excepted sound recordings (s 128A(7)(b) (as so added)); (3) what commercial benefit a potential licensee is likely to obtain from playing the excepted sound recordings (s 128A(7)(c) (as so added)); and (4) the extent to which the owners of copyright in the excepted sound recordings will receive equitable remuneration, from sources other than the proposed licence or licensing scheme, for the inclusion of their recordings in the broadcasts to be shown or played in public by a potential licensee (s 128A(7)(d) (as so added)). As to who is the owner of the copyright in a work see PARA 118 et seq ante.

18 Ibid s 128A(6)(b) (as added: see note 1 supra).

19 Ibid s 128A(6)(c) (as added: see note 1 supra).

20 Ibid s 128A(6)(d) (as added: see note 1 supra).

21 Ibid s 128A(6)(e) (as added: see note 1 supra).

22 le under ibid s 128A(2) (as added): see the text to notes 7-8 supra.

23 le under ibid s 118: see PARA 225 ante.

24 le under ibid s 125: see PARA 254 ante.

25 Ibid s 128A(8) (as added: see note 1 supra). If a reference made to the Tribunal under s 118 (see PARA 225 ante) or s 125 (see PARA 254 ante) is permitted under s 128A(8) (as added) then: (1) the reference must not

be considered premature only because the licence or licensing scheme has not been notified to the Secretary of State under s 128A(2) (as added) (s 128A(10)(a) (as so added)); and (2) where the Tribunal decides to entertain the reference, s 128A(2)-(5) (as added) (see the text to notes 7-16 supra) does not apply (s 128A(10)(b) (as so added)).

- 26 Ie under ibid s 119: see PARA 226 ante.
- 27 Ibid s 128A(9) (as added: see note 1 supra).
- 28 Ie under ibid s 120 (as amended): see PARA 241 ante.
- 29 Ie under ibid s 121: see PARA 245 ante.
- 30 Ie under ibid s 122: see PARA 248 ante.
- 31 Ie under ibid s 126: see PARA 258 ante.
- 32 Ie under ibid s 127 (as amended): see PARA 260 ante.
- 33 Ibid s 128A(11) (as added: see note 1 supra).

UPDATE

264 Notification of licence or licensing scheme for excepted sound recordings

NOTE 6--See *Phonographic Performance Ltd v The British Hospitality Association* [2008] EWHC 2715 (Ch), [2009] RPC 185, [2008] All ER (D) 238 (Nov).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(iv) References and Applications in relation to Licensing Schemes/C. REFERENCES AND APPLICATIONS IN RELATION TO LICENCES/265. Reference to the Tribunal of licence or licensing scheme for excepted sound recordings.

265. Reference to the Tribunal of licence or licensing scheme for excepted sound recordings.

The Copyright Tribunal¹ may make appropriate enquiries to establish whether a licence or licensing scheme² referred to it by the Secretary of State³ is reasonable⁴ in the circumstances⁵. When considering the matter referred, and after concluding any such enquiries, the Tribunal must take into account: (1) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the specified factors⁶; and (2) any other factors it considers relevant⁷, and must then make an order⁸.

The Tribunal must make such order:

- 218 (a) in the case of a licensing scheme, confirming or varying the proposed scheme, either generally or so far as it relates to cases of any description⁹; or
- 219 (b) in the case of a licence, confirming or varying the proposed licence, as the Tribunal may determine to be reasonable in the circumstances¹⁰.

The Tribunal may direct that the order, so far as it reduces the amount of charges payable, is to have effect from a date before that on which it is made¹¹.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 For the meaning of 'licence' see PARA 264 note 1 ante; and for the meaning of 'licensing scheme' see PARA 224 ante. As to the licences and licensing schemes to which the Copyright, Designs and Patents Act 1988 s 264B (as added) applies see PARA 264 ante.

3 Ie under ibid s 128A(4)(a) or (5) (as added): see PARA 264 ante. As to the Secretary of State see PARA 183 note 2 ante.

4 As to the criteria of reasonableness see PARA 266 et seq post.

5 Copyright, Designs and Patents Act 1988 s 128B(1) (s 128B added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 21(3)). As to the procedure that the Tribunal will adopt in considering references made to it by the Secretary of State see the Copyright Tribunal Practice Direction 'References to the Copyright Tribunal under s 128(A) and (B) of the Copyright, Designs and Patents Act 1988' (dated 3 January 2006).

6 Copyright, Designs and Patents Act 1988 s 128B(2)(a) (as added: see note 5 supra). The specified factors are those set out in s 128A(7) (as added) (see PARA 264 note 17 ante).

7 Ibid s 128B(2)(b) (as added: see note 5 supra).

8 Ibid s 128B(2) (as added: see note 5 supra).

9 Ibid s 128B(3)(a) (as added: see note 5 supra).

10 Ibid s 128B(3)(b) (as added: see note 5 supra).

11 Ibid s 128B(4) (as added: see note 5 supra). If such a direction is made, any necessary repayments to a licensee must be made in respect of charges already paid: s 128B(4) (as so added). The Tribunal may award simple interest on repayments, at such rate and for such period, ending not later than the date of the order, as it thinks fit: s 128B(5) (as so added).

UPDATE

265 Reference to the Tribunal of licence or licensing scheme for excepted sound recordings

TEXT AND NOTES 1-5--The Tribunal's role under s 128B is inquisitorial rather than adversarial and the word 'may' in s 128B(1) confers a discretion whether to make enquiries rather than imposing an obligation to do so: *Phonographic Performance Ltd v British Hospitality Association* [2010] EWHC 209 (Ch), [2010] All ER (D) 46 (Jun).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/ (v) Criteria as to Reasonableness/266. General considerations; unreasonable discrimination.

(v) Criteria as to Reasonableness

266. General considerations; unreasonable discrimination.

Without prejudice to the obligation of the Copyright Tribunal¹ to have regard to all relevant considerations, in determining what is reasonable on a reference or application² relating to a licensing scheme³ or licence, the Tribunal must have regard to:

- 220 (1) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances⁴; and
- 221 (2) the terms of those schemes or licences⁵,

and must exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person⁶.

The mention⁷ of specific matters to which the Tribunal is to have regard in certain classes of case does not affect the Tribunal's general obligation in any case to have regard to all relevant considerations⁸.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Ie under the Copyright, Designs and Patents Act 1988 Pt I Ch VII (ss 116-144) (as amended).

3 For the meaning of 'licensing scheme' see PARA 224 ante.

4 Copyright, Designs and Patents Act 1988 s 129(a).

5 Ibid s 129(b).

6 Ibid s 129. As to what amounts to discrimination see *Phonographic Performance Ltd v Candy Rock Recording Ltd* [2000] IP & T 723, [2000] EMLR 618, CA.

7 Ie in the Copyright, Designs and Patents Act 1988 ss 129-134: see PARAS 267-271 post.

8 Ibid s 135. See eg *British Phonographic Industry Ltd v Mechanical Copyright Protection Society Ltd (No 2)* [1993] EMLR 86; *Phonographic Performance Ltd v Candy Rock Recording Ltd* [2000] IP & T 723, [2000] EMLR 618, CA.

UPDATE

266 General considerations; unreasonable discrimination

NOTE 8--See also *Phonographic Performance Ltd v British Hospitality Association* [2010] EWHC 209 (Ch), [2010] All ER (D) 46 (Jun).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/ (v) Criteria as to Reasonableness/267. Licences for reprographic copying.

267. Licences for reprographic copying.

Without prejudice to the obligation of the Copyright Tribunal¹ to have regard to all relevant considerations², where a reference or application is made to the Tribunal³ relating to the licensing of reprographic copying⁴ of published⁵ literary⁶, dramatic⁷, musical⁸ or artistic⁹ works, or the typographical arrangement of published editions¹⁰, the Tribunal must have regard to:

- 222 (1) the extent to which published editions of the works in question are otherwise available¹¹;
- 223 (2) the proportion of the work to be copied¹²; and
- 224 (3) the nature of the use to which the copies are likely to be put¹³.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 See the Copyright, Designs and Patents Act 1988 s 135; and PARA 266 ante.

3 See under ibid Pt I Ch VII (ss 116-144) (as amended).

4 For the meaning of 'reprographic copying' see PARA 184 note 2 ante.

5 For the meaning of 'published' see PARA 63 ante.

6 For the meaning of 'literary work' see PARA 67 ante.

7 For the meaning of 'dramatic work' see PARA 73 ante.

8 For the meaning of 'musical work' see PARA 73 ante.

9 For the meaning of 'artistic work' see PARA 75 ante.

10 For the meaning of 'published edition' see PARA 92 ante.

11 Copyright, Designs and Patents Act 1988 s 130(a).

12 Ibid s 130(b).

13 Ibid s 130(c).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/ (v) Criteria as to Reasonableness/268. Licences for educational establishments in respect of works included in broadcasts.

268. Licences for educational establishments in respect of works included in broadcasts.

The following provisions apply to references or applications¹ relating to licences for the recording by or on behalf of educational establishments² of broadcasts³ which include copyright works⁴, or the making of copies⁵ of such recordings, for educational purposes⁶.

Without prejudice to the obligation of the Copyright Tribunal⁷ to have regard to all relevant considerations⁸, the Tribunal must, in considering what charges, if any, should be paid for a licence, have regard to the extent to which the owners of copyright⁹ in the works included in the broadcast have already received, or are entitled to receive, payment in respect of their inclusion¹⁰.

1 le under the Copyright, Designs and Patents Act 1988 Pt I Ch VII (ss 116-144) (as amended).

2 For the meaning of 'educational establishment' see PARA 190 ante.

3 For the meaning of 'broadcast' see PARA 89 ante.

4 For the meaning of 'copyright work' see PARA 57 ante.

5 For the meaning of 'copies' see PARA 314 post.

6 Copyright, Designs and Patents Act 1988 s 131(1) (s 131(1), (2) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).

7 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

8 See the Copyright, Designs and Patents Act 1988 s 135; and PARA 266 ante.

9 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

10 Copyright, Designs and Patents Act 1988 s 131(2) (as amended: see note 6 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/ (v) Criteria as to Reasonableness/269. Licences to reflect conditions imposed by promoters of events.

269. Licences to reflect conditions imposed by promoters of events.

The following provisions apply to references or applications¹ in respect of licences relating to sound recordings², films³ or broadcasts⁴ which include, or are to include, any entertainment or other event⁵.

Without prejudice to the obligation of the Copyright Tribunal⁶ to have regard to all relevant considerations⁷, the Tribunal must have regard to any conditions imposed by the promoters of the entertainment or other event; and, in particular, the Tribunal must not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions⁸.

Nothing in the above provisions requires the Tribunal to have regard to any such conditions in so far as they purport to regulate the charges to be imposed in respect of the grant of licences⁹ or relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film or broadcast¹⁰.

1 Ie under the Copyright, Designs and Patents Act 1988 Pt I Ch VII (ss 116-144) (as amended).

2 For the meaning of 'sound recording' see PARA 84 ante.

3 For the meaning of 'film' see PARA 86 ante.

4 For the meaning of 'broadcast' see PARA 89 ante.

5 Copyright, Designs and Patents Act 1988 s 132(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(2)(a)).

6 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

7 See the Copyright, Designs and Patents Act 1988 s 135; and PARA 266 ante.

8 Ibid s 132(2).

9 Ibid s 132(3)(a).

10 Ibid s 132(3)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 3(1)(j)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/ (v) Criteria as to Reasonableness/270. Licences to reflect payments in respect of underlying rights.

270. Licences to reflect payments in respect of underlying rights.

In considering what charges should be paid for a licence:

- 225 (1) on a reference or application¹ for the rental or lending² of a work³; or
- 226 (2) on an application⁴ for the settlement of royalty or other sum payable for the lending of certain works⁵,

the Copyright Tribunal⁶ must, without prejudice to its obligation to have regard to all relevant considerations⁷, take into account any reasonable⁸ payments which the owner of the copyright⁹ in the work is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, to owners of copyright in works included in that work¹⁰.

On any reference or application¹¹ relating to licensing in respect of the copyright in sound recordings¹², films¹³ or broadcasts¹⁴, the Tribunal must, without prejudice to its obligation to have regard to all relevant considerations, take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance¹⁵ included in the recording, film or broadcast¹⁶.

1 Ie under the Copyright, Designs and Patents Act 1988 Pt I Ch VII (ss 116-144) (as amended).

2 For the meanings of 'rental' and 'lending' see PARA 323 post.

3 Copyright, Designs and Patents Act 1988 s 133(1)(a) (s 133(1) substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 13(1)).

4 Ie an application under the Copyright, Designs and Patents Act 1988 s 142 (as substituted): see PARA 284 post.

5 Ibid s 133(1)(b) (as substituted: see note 3 supra).

6 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

7 See the Copyright, Designs and Patents Act 1988 s 135; and PARA 266 ante.

8 As to the criteria of reasonableness see PARA 266 post.

9 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

10 Copyright, Designs and Patents Act 1988 s 133(1) (as substituted: see note 3 supra).

11 Ie under ibid Pt I Ch VII (as amended).

12 For the meaning of 'sound recording' see PARA 84 ante.

13 For the meaning of 'film' see PARA 86 ante.

14 For the meaning of 'broadcast' see PARA 89 ante.

15 For the meaning of 'performance' see PARA 324 post.

16 Copyright, Designs and Patents Act 1988 ss 133(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(1)(k), (2)(b)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/ (v) Criteria as to Reasonableness/271. Licences in respect of works included in retransmissions.

271. Licences in respect of works included in retransmissions.

On a reference or application¹ relating to a licence to include in a broadcast²:

- 227 (1) literary³, dramatic⁴, musical⁵ or artistic works⁶; or
- 228 (2) sound recordings⁷ or films⁸,

where one broadcast ('the first transmission') is, by reception and immediate retransmission, to be further broadcast ('the further transmission')⁹ then, so far as the further transmission is to the same area as the first transmission, the Copyright Tribunal¹⁰ must, in considering what charges, if any, should be paid for licences for either transmission, but without prejudice to its obligation to have regard to all relevant considerations¹¹, have regard to the extent to which the copyright owner¹² has already received, or is entitled to receive, payment for the other transmission which adequately remunerates him in respect of transmissions to that area¹³.

So far as the further transmission is to an area outside that to which the first transmission was made, the Tribunal must leave the further transmission out of account in considering what charges, if any, should be paid for licences for the first transmission¹⁴.

1 I.e. a reference or application under the Copyright, Designs and Patents Act 1988 Pt I Ch VII (ss 116-144) (as amended), other than an application under s 73A (as added) (see PARA 291 post).

2 For the meaning of 'broadcast' see PARA 89 ante.

3 For the meaning of 'literary work' see PARA 67 ante.

4 For the meaning of 'dramatic work' see PARA 73 ante.

5 For the meaning of 'musical work' see PARA 73 ante.

6 Copyright, Designs and Patents Act 1988 s 134(1)(a). For the meaning of 'artistic work' see PARA 75 ante.

7 For the meaning of 'sound recording' see PARA 84 ante.

8 Copyright, Designs and Patents Act 1988 s 134(1)(b). For the meaning of 'film' see PARA 86 ante.

9 Ibid s 134(1) (amended by the Broadcasting Act 1996 s 138, Sch 9 para 2; and the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2); Copyright, Designs and Patents Act 1988 s 134(3A) (added by the Broadcasting Act 1996 Sch 9 para 2).

10 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

11 See the Copyright, Designs and Patents Act 1988 s 135; and PARA 266 ante.

12 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

13 Copyright, Designs and Patents Act 1988 s 134(2).

14 Ibid s 134(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(vi) Applications relating to the Statutory Right to include Sound Recordings in Broadcasts/272. Applications to settle payments.

(vi) Applications relating to the Statutory Right to include Sound Recordings in Broadcasts

272. Applications to settle payments.

Where a person has a statutory right¹ to include any sound recordings² in a broadcast³, he must apply to the Copyright Tribunal⁴ to settle the terms of payment⁵.

On such an application the Tribunal must consider the matter and make such order as it may determine to be reasonable⁶ in the circumstances⁷. Such an order has effect from the date the applicant begins to exercise the right; and any necessary repayments, or further payments, must be made in respect of amounts that have fallen due⁸.

1 Ie under the Copyright, Designs and Patents Act 1988 ss 135A-135C (as added): see PARAS 195-197 ante.

2 For the meaning of 'sound recording' see PARA 195 note 1 ante.

3 For the meaning of 'broadcast' see PARA 89 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 See the Copyright, Designs and Patents Act 1988 s 135B(3)(b) (as added); and PARA 196 ante. For the meaning of 'terms of payment' see PARA 196 note 4 ante. As soon as the Broadcasting Act 1990 came into force on 1 March 1991 almost all the independent radio companies notified the Tribunal that they were exercising their statutory right and applied to the Tribunal for settlement of the terms: see *Association of Independent Radio Companies Ltd v Phonographic Performance Ltd (British Broadcasting Corpn intervening)* [1994] RPC 143.

6 As to the factors to be taken into account see PARA 279 post.

7 Copyright, Designs and Patents Act 1988 s 135D(1) (s 135D added by the Broadcasting Act 1990 s 175(1)). As to the procedure on the application see PARA 275 et seq post. As to the Secretary of State's power to amend the Copyright, Designs and Patents Act 1988 s 135D (as added) see PARA 195 note 1 ante. As to the Secretary of State see PARA 183 note 2 ante.

8 Ibid s 135D(2) (as added: see note 7 supra). As to the Tribunal's power to award interest see PARA 221 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(vi) Applications relating to the Statutory Right to include Sound Recordings in Broadcasts/273. References etc about conditions, information and other terms.

273. References etc about conditions, information and other terms.

A person exercising the statutory right¹ to include any sound recordings² in a broadcast³, or who has given notice to the Copyright Tribunal⁴ of his intention to do so⁵, may refer to the Tribunal⁶:

- 229 (1) any question whether any condition as to the inclusion in a broadcast of sound recordings, notice of which has been given to him by the licensing body⁷ in question, is a reasonable condition⁸; or
- 230 (2) any question whether any information is information which the licensing body can reasonably require him to provide⁹.

On such a reference the Tribunal must consider the matter and make such order as it may determine to be reasonable¹⁰ in the circumstances¹¹.

1 Ie under the Copyright, Designs and Patents Act 1988 s 135C (as added and amended): see PARA 197 ante.

2 For the meaning of 'sound recording' see PARA 195 note 1 ante.

3 For the meaning of 'broadcast' see PARA 89 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 Ie under the Copyright, Designs and Patents Act 1988 s 135B (as added): see PARA 196 ante.

6 As to the procedure on the application see PARA 275 et seq post.

7 For the meaning of 'licensing body' see PARA 224 ante.

8 Copyright, Designs and Patents Act 1988 s 135E(1)(a) (s 135E added by the Broadcasting Act 1990 s 175(1); and the Copyright, Designs and Patents Act 1988 s 135E(1)(a) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). As to the Secretary of State's power to amend the Copyright, Designs and Patents Act 1988 s 135E (as added and amended) see PARA 195 note 1 ante. As to the Secretary of State see PARA 183 note 2 ante.

9 Ibid s 135E(1)(b) (as added: see note 8 supra).

10 As to the factors to be taken into account see PARA 279 post.

11 Copyright, Designs and Patents Act 1988 s 135E(2) (as added: see note 8 supra).

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274. Applications for review of order.

A person exercising the statutory right¹ to include any sound recordings² in a broadcast³ or the licensing body⁴ may apply to the Copyright Tribunal⁵ to review any order made⁶ by the Tribunal⁷.

An application may not be made, except with the special leave⁸ of the Tribunal, within 12 months⁹ from the date of the order or of the decision on a previous such application¹⁰, or if the order was made so as to be in force for 15 months or less, or as a result of a decision on a previous application is due to expire within 15 months of that decision, until the last three months before the expiry date¹¹.

On the application the Tribunal must consider the matter and make such order confirming or varying the original order as it may determine to be reasonable¹² in the circumstances¹³. Such an order has effect from the date on which it is made or such later date as may be specified by the Tribunal¹⁴.

1 le under the Copyright, Designs and Patents Act 1988 s 135C (as added and amended): see PARA 197 ante.

2 For the meaning of 'sound recording' see PARA 195 note 1 ante.

3 For the meaning of 'broadcast' see PARA 89 ante.

4 For the meaning of 'licensing body' see PARA 224 ante.

5 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

6 le under the Copyright, Designs and Patents Act 1988 s 135D (as added) (see PARA 272 ante) or s 135E (as added and amended) (see PARA 273 ante).

7 Ibid s 135F(1) (s 135F added by the Broadcasting Act 1990 s 175(1)). As to the procedure on the application see PARA 275 et seq post. As to the Secretary of State's power to amend the Copyright, Designs and Patents Act 1988 s 135F (as added) see PARA 195 note 1 ante. As to the Secretary of State see PARA 183 note 2 ante.

8 As to applications for special leave see PARA 276 post.

9 For the meaning of 'month' see PARA 185 note 18 ante.

10 Copyright, Designs and Patents Act 1988 s 135F(2)(a) (as added: see note 7 supra).

11 Ibid s 135F(2)(b) (as added: see note 7 supra).

12 As to the factors to be taken into account see PARA 279 post.

13 Copyright, Designs and Patents Act 1988 s 135F(3) (as added: see note 7 supra). As to the Tribunal's power to award interest see PARA 221 ante.

14 Ibid s 135F(4) (as added: see note 7 supra).

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275. Commencement of proceedings.

Proceedings¹ with respect to use as of right of sound recordings² in broadcasts³ must be commenced by the service⁴ on the secretary of the Copyright Tribunal⁵ by the applicant⁶ of a notice in the prescribed form⁷, together with a statement of the applicant's case⁸. As soon as practicable after receipt of the notice, the secretary must serve a copy of the same, with a copy of the applicant's statement, on the licensing body⁹ named in the notice and, in the case of an application for review of an order¹⁰, on every person who was a party to the proceedings when the original order of the Tribunal was made¹¹.

Except where the chairman¹² otherwise directs, the secretary must give notice by advertisement in such manner as the chairman may think fit of every such reference or application made to the Tribunal¹³.

1 I.e. under the Copyright, Designs and Patents Act 1988 s 135D (as added) (see PARA 272 ante), s 135E (as added and amended) (see PARA 273 ante), or s 135F (as added) (see PARA 274 ante). For the meaning of 'proceedings' see PARA 215 note 4 ante.

2 For the meaning of 'sound recording' see PARA 195 note 1 ante.

3 For the meaning of 'broadcast' see PARA 89 ante.

4 As to the service of documents see PARA 215 ante.

5 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

6 For the meaning of 'applicant' see PARA 227 note 5 ante.

7 For the prescribed form of notice in the case of an application to settle terms of payment under the Copyright, Designs and Patents Act 1988 s 135D (as added) (see PARA 272 ante) see the Copyright Tribunal Rules 1989, SI 1989/1129, r 26A(1)(a), Sch 3 Form 10A (r 26A added by SI 1991/201; and the Copyright Tribunal Rules 1989, SI 1989/1129, Sch 3 Forms 10A-10C added by SI 1991/201; and amended by SI 2003/2498). For the prescribed form of notice in the case of a reference under the Copyright, Designs and Patents Act 1988 s 135E (as added and amended) (see PARA 273 ante) see the Copyright Tribunal Rules 1989, SI 1989/1129, r 26A(1)(b) (as so added), Sch 3 Form 10B (as so added and amended). For the prescribed form of notice in the case of an application for review of an order under the Copyright, Designs and Patents Act 1988 s 135F (as added) (see PARA 274 ante) see the Copyright Tribunal Rules 1989, SI 1989/1129, r 26A(1)(c) (as so added), Sch 3 Form 10C (as so added and amended). As to the use of forms see PARA 219 ante.

8 Ibid r 26A(1) (as added (see note 7 supra); and amended by SI 2003/2498).

9 For the meaning of 'licensing body' see PARA 224 ante.

10 I.e. an application under the Copyright, Designs and Patents Act 1988 s 135F (as added): see PARA 274 ante.

11 Copyright Tribunal Rules 1989, SI 1989/1129, r 26A(2) (as added: see note 7 supra).

12 For the meaning of 'the chairman' see PARA 215 note 10 ante.

13 Copyright Tribunal Rules 1989, SI 1989/1129, r 26A(3) (as added: see note 7 supra).

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276. Application for special leave.

An application¹ for the special leave of the Copyright Tribunal² for the review of an order³ must be made by the service⁴ on the secretary of the Tribunal by the applicant⁵ of a notice in the prescribed form⁶, together with a statement of the grounds for the application⁷. The applicant must serve a copy of the notice and statement on every person who was a party to the application or reference on which the Tribunal made the last previous order with respect to the licence⁸. Within 14 days⁹ of the service on him of such notice, any such party may make representations in writing to the Tribunal regarding the application for special leave; and he must serve a copy of any such representations on the applicant and inform the secretary of the date of such service¹⁰.

The Tribunal, after considering the application and any representations and, if it considers it necessary, after having given the applicant and any such party who has made such representations an opportunity of being heard, must grant or dismiss the application, with such order as to costs¹¹, as it may think fit; and if it grants the application, it may give such directions as to the taking of any steps required or authorised¹² or as to any further matter as the Tribunal thinks fit¹³. The decision of the Tribunal must be in writing and must include a statement of its reasons; and the secretary must serve a copy thereof on the applicant and on any party who made representations¹⁴.

1 Ie under the Copyright, Designs and Patents Act 1988 s 135F(2) (as added): see PARA 274 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 Ie under the Copyright, Designs and Patents Act 1988 s 135F (as added): see PARA 274 ante.

4 As to the service of documents see PARA 215 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 26B(1), Sch 3 Form 3 (r 26B added, and Sch 3 Form 3 substituted, by SI 1991/201). As to the use of forms see PARA 219 ante.

7 Copyright Tribunal Rules 1989, SI 1989/1129, r 26B(1) (as added: see note 6 supra).

8 Ibid r 26B(1) (as added: see note 6 supra).

9 As to extension of time limits see PARA 216 ante.

10 Copyright Tribunal Rules 1989, SI 1989/1129, r 26B(2) (as added: see note 6 supra).

11 As to the Tribunal's power to award costs see PARA 220 ante.

12 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

13 Ibid r 26B(3) (as added: see note 6 supra). As to the failure to comply with directions see PARA 217 ante.

14 Ibid r 26B(4) (as added: see note 6 supra).

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277. Procedure and decision of the Tribunal.

Within 21 days¹ of the service of the notice², the licensing body³ or other person must serve⁴ on the secretary of the Copyright Tribunal⁵ his written answer to the applicant's⁶ statement, and must serve a copy of the same on the applicant and inform the secretary of the date of such service⁷. Thereafter the procedure is the same as on a reference of a licensing scheme to the Tribunal⁸.

The final decision of the Tribunal on a reference or an application⁹ must be given in writing and must include a statement of the Tribunal's reasons; and there must be annexed to the decision a copy of the order and, where the Tribunal has varied a previous order, a copy of that order as varied¹⁰. The secretary must as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision¹¹.

1 As to the extension of time limits see PARA 216 ante.

2 I.e. the notice under the Copyright Tribunal Rules 1989, SI 1989/1129, r 26A (as added and amended): see PARA 275 ante.

3 For the meaning of 'licensing body' see PARA 224 ante.

4 As to the service of documents see PARA 215 ante.

5 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

6 For the meaning of 'applicant' see PARA 227 note 5 ante.

7 Copyright Tribunal Rules 1989, SI 1989/1129, r 26C(1) (r 26C added by SI 1991/201).

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 26C(2) (as added: see note 7 supra). This provides that rr 10-16 (see PARA 233 et seq ante) apply as they apply to proceedings in respect of a reference or an application under r 3 (see PARA 227 ante).

9 I.e. under ibid r 26A (as added and amended): see PARA 275 ante.

10 Ibid r 26C(3) (as added: see note 7 supra). As to appeals against decisions of the Tribunal see PARA 309 post.

11 Ibid r 26C(4) (as added: see note 7 supra). Rule 18 (see PARA 240 ante) applies with regard to the publication of the decision: r 26C(4) (as so added).

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278. Intervener's application.

A person who or organisation which claims to have a substantial interest in proceedings in respect of a reference or an application¹ may apply² to the Copyright Tribunal³ to be made a party to that reference or application⁴.

1 le under the Copyright Tribunal Rules 1989, SI 1989/1129, r 26A (as added and amended): see PARA 275 ante.

2 le in accordance with *ibid* r 23: see PARA 257 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 Copyright Tribunal Rules 1989, SI 1989/1129, r 26D (added by SI 1991/201). The Copyright Tribunal Rules 1989, SI 1989/1129, r 23 (see PARA 257 ante) applies to proceedings in respect of such an application as it applies to proceedings in respect of an application under r 20 (see PARA 255 ante): r 26D (as so added).

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279. Factors to be taken into account.

In determining what is reasonable on an application or reference¹, or on reviewing any order², the Copyright Tribunal³ must:

- 231 (1) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the statutory right⁴ to include any sound recordings⁵ in a broadcast⁶; and
- 232 (2) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body⁷.

In settling the terms of payment⁸, the Tribunal must not be guided by any order it has made under any other enactment⁹.

The factors to be taken into account in relation to retransmissions¹⁰ apply on an application or reference relating to the statutory right¹¹ as they apply on an application or reference relating to a licence¹².

1 Ie under the Copyright, Designs and Patents Act 1988 s 135D (as added) (see PARA 272 ante) or s 135E (as added and amended) (see PARA 273 ante).

2 Ie under ibid s 135F (as added): see PARA 274 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 Ie the right under the Copyright, Designs and Patents Act 1988 s 135C (as added and amended): see PARA 197 ante.

5 For the meaning of 'sound recording' see PARA 195 note 1 ante.

6 Copyright, Designs and Patents Act 1988 s 135G(1)(a) (s 135G added by the Broadcasting Act 1990 s 175(1)). For the meaning of 'broadcast' see PARA 89 ante. See *Phonographic Performance Ltd v Virgin Retail Ltd* [2001] EMLR 139, [2000] All ER (D) 1180.

7 Copyright, Designs and Patents Act 1988 s 135G(1)(b) (as added: see note 6 supra). As to the Secretary of State's power to amend s 135G (as added) see PARA 195 note 1 ante. As to the Secretary of State see PARA 183 note 2 ante.

8 Ie under ibid s 135D (as added): see PARA 272 ante. For the meaning of 'terms of payment' see PARA 196 note 4 ante.

9 Ibid s 135G(2) (as added: see note 6 supra). For these purposes, 'any other enactment' means any enactment other than s 135D (as added) (see PARA 272 ante): s 135G(2) (as so added).

10 Ie ibid s 134 (as amended): see PARA 271 ante.

11 Ie an application or reference under ibid ss 135D-135F (as added): see PARAS 272-274 ante.

12 Ibid s 135G(3) (as added: see note 6 supra).

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(vii) Appeals against Orders made by the Secretary of State

280. Appeals against orders made by the Secretary of State.

The owner of the copyright¹ in a work which is the subject of an order² extending coverage of a licensing scheme³ or licence may appeal to the Copyright Tribunal⁴ which may confirm or discharge the order, or vary it so as to exclude works from it, as it thinks fit having regard to the relevant considerations⁵.

Where the Secretary of State⁶ has made an order⁷ confirming, varying or discharging an order extending coverage of a licensing scheme or licence, the person who applied for the order⁸ or any person or organisation representative of educational establishments who was given notice of the application for the order and made⁹ representations¹⁰ may appeal to the Tribunal which may confirm or discharge the order or make any other order which the Secretary of State might have made¹¹.

Any appeal under these provisions must be brought within six weeks of the making of the order or such further period as the Tribunal may allow¹².

An order extending coverage of a licensing scheme or licence or varying or discharging an order extending a licensing scheme or licence does not come into effect until the end of the period of six weeks from the making of the order or, if an appeal is brought before the end of that period, until the appeal proceedings are disposed of or withdrawn¹³. If an appeal is brought after the end of that period, any decision of the Tribunal on the appeal does not affect the validity of anything done in reliance on the order appealed against before that decision takes effect¹⁴.

1 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

2 Ie an order under the Copyright, Designs and Patents Act 1988 s 137: see PARA 185 ante.

3 For the meaning of 'licensing scheme' see PARA 224 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 Copyright, Designs and Patents Act 1988 s 139(1). The relevant considerations are those mentioned in s 137(2) (see PARA 185 ante): s 139(1). As to the procedure on such an appeal see PARAS 281-283 post.

Section 139 applies in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment: Copyright (Application of Provisions relating to Educational Establishments to Teachers) (No 2) Order 1989, SI 1989/1067, art 2. For the meaning of 'educational establishment' see PARA 190 ante; and for the meanings of 'teacher' and 'pupil' see PARA 190 note 7 ante.

6 As to the Secretary of State see PARA 183 note 2 ante.

7 Ie an order under the Copyright, Designs and Patents Act 1988 s 138: see PARA 186 ante.

8 Ibid s 139(2)(a).

9 Ie in accordance with ibid s 138(4): see PARA 186 ante.

10 Ibid s 139(2)(b).

- 11 Ibid s 139(2). As to the procedure on such an appeal see PARAS 281-283 post.
- 12 Ibid s 139(3).
- 13 Ibid s 139(4).
- 14 Ibid s 139(5).

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281. Commencement of proceedings.

An appeal to the Copyright Tribunal¹ against an order made by the Secretary of State² may be made within six weeks³ of the making of the order or such further period as the Tribunal may allow:

- 233 (1) in the case of an order extending coverage of a licensing scheme or licence⁴, by the service⁵ by the copyright owner⁶ on the secretary of the Tribunal of a notice in the prescribed form⁷, together with a statement of his case, and by serving a copy thereof on the licensing body⁸ and any person who or organisation which was given⁹ notice¹⁰; and
- 234 (2) in the case of an order varying or discharging an order extending a licensing scheme or licence¹¹, by the copyright owner or any person who or organisation which was given notice¹² and who or which made representations, by the service on the secretary of a notice in the prescribed form¹³, together with a statement of his case, and by serving a copy thereof on any other person who or organisation which made¹⁴ representations¹⁵.

1 Ie under the Copyright, Designs and Patents Act 1988 s 139: see PARA 280 ante. As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 As to the Secretary of State see PARA 183 note 2 ante.

3 As to extension of time limits see PARA 216 ante.

4 Ie an order under the Copyright, Designs and Patents Act 1988 s 137: see PARA 185 ante.

5 As to the service of documents see PARA 215 ante.

6 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

7 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 24(a), Sch 3 Form 9. As to the use of forms see PARA 219 ante.

8 For the meaning of 'licensing body' see PARA 224 ante.

9 Ie in accordance with the Copyright, Designs and Patents Act 1988 s 137: see PARA 185 ante.

10 Copyright Tribunal Rules 1989, SI 1989/1129, r 24(a).

11 Ie an order under the Copyright, Designs and Patents Act 1988 s 138: see PARA 186 ante.

12 Ie under *ibid* s 138: see PARA 186 ante.

13 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 24(b), Sch 3 Form 10.

14 Ie in accordance with the Copyright, Designs and Patents Act 1988 s 138: see PARA 186 ante.

15 Copyright Tribunal Rules 1989, SI 1989/1129, r 24(b).

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282. Procedure and decision of the Tribunal.

Within 21 days¹ of the service of the notice on him² a person or organisation must serve on the secretary of the Copyright Tribunal³ a written answer to the appellant's statement setting out his case, and must serve a copy thereof on the appellant and any other person served with notice⁴ and inform the secretary of the date of such service⁵. Thereafter the procedure is the same as on a reference of a licensing scheme to the Tribunal⁶.

The final decision of the Tribunal on an appeal⁷ must be given in writing and must include a statement of the Tribunal's reasons and, where the Tribunal varies any previous order or makes any other order, there must be annexed to the decision a copy of that order as varied or, as the case may be, that other order; and the secretary must as soon as practicable serve on every party to the appeal a copy of the Tribunal's decision⁸.

1 As to the extension of time limits see PARA 216 ante.

2 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 25: see the text and notes 3-8 infra. As to the service of documents see PARA 215 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 25.

5 Ibid r 25(1).

6 Ibid r 25(2). This provides that rr 10-16 (see PARA 233 et seq ante) apply as they apply to proceedings in respect of an application under r 3 (see PARA 227 ante).

7 Ie under ibid r 24: see PARA 281 ante.

8 Ibid r 25(3). Rules 18 and 19 (see PARA 240 ante) apply with regard to the publication and the effective date of the decision: r 25(3). As to appeals against decisions of the Tribunal see PARA 309 post.

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283. Intervener's application.

A person who or organisation which claims to have a substantial interest in proceedings in respect of an appeal against an order made by the Secretary of State¹ may² apply to the Copyright Tribunal³ to be made a party to the proceedings⁴.

1 Ie an appeal under the Copyright Tribunal Rules 1989, SI 1989/1129, r 24: see PARA 281 ante. As to the Secretary of State see PARA 183 note 2 ante.

2 Ie in accordance with *ibid* r 23: see PARA 257 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 Copyright Tribunal Rules 1989, SI 1989/1129, r 26. Rule 23 (see PARA 257 ante) applies to proceedings in respect of such an application as it applies to proceedings in respect of an application under r 20 (see PARA 255 ante): r 26.

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(viii) Applications for Determination of Royalty or other Sum payable for Lending of Certain Works

284. Royalty or other sum payable for lending of certain works.

An application¹ to settle the royalty or other sum payable for the lending of copies of certain copyright works may be made to the Copyright Tribunal² by the copyright owner³ or the person claiming to be treated as licensed by him⁴. The Tribunal must consider the matter and make such order as it may determine to be reasonable in the circumstances⁵.

Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal must consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances⁶. Such an application may not be made, except with the special leave⁷ of the Tribunal, within 12 months⁸ from the date of the original order or of the order on a previous such application⁹. An order made by the Tribunal on an application to vary an order has effect from the date on which it is made or such later date as may be specified by the Tribunal¹⁰.

1 Ie under the Copyright, Designs and Patents Act 1988 s 66 (as substituted): see PARA 393 post.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 Copyright, Designs and Patents Act 1988 s 142(1) (s 142 substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 13(2)). As to the procedure on such an application see PARAS 285-288 post.

5 Copyright, Designs and Patents Act 1988 s 142(2) (as substituted: see note 4 supra). As to the criteria of reasonableness see PARA 266 et seq post; and as to the factors to be taken into account see PARA 270 ante. As to appeals against orders of the Tribunal see PARA 309 post.

6 Ibid s 142(3) (as substituted: see note 4 supra). As to the procedure on such an application see PARAS 285-288 post. See also note 5 supra.

7 As to applications for special leave see PARA 286 post.

8 For the meaning of 'month' see PARA 185 note 18 ante.

9 Copyright, Designs and Patents Act 1988 s 142(4) (as substituted: see note 4 supra).

10 Ibid s 142(5) (as substituted: see note 4 supra).

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285. Commencement of proceedings.

Proceedings in relation to an application to settle the royalty or other sum payable for the lending of certain works¹ must be commenced by the service² on the secretary of the Copyright Tribunal³ by the copyright owner⁴ or the person claiming to be treated as licensed by him of a notice in the prescribed form⁵, together with a statement of the applicant's case, and by serving a copy thereof on the other party⁶.

1 le an application under the Copyright, Designs and Patents Act 1988 s 142 (as substituted): see PARA 284 ante.

2 As to the service of documents see PARA 215 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

5 For the prescribed form of notice in the case of an application under the Copyright, Designs and Patents Act 1988 s 142(1) (as substituted) see the Copyright Tribunal Rules 1989, SI 1989/1129, r 27(a), Sch 3 Form 11. For the prescribed form of notice in the case of an application under the Copyright, Designs and Patents Act 1988 s 142(3) (as substituted) see the Copyright Tribunal Rules 1989, SI 1989/1129, r 27(b), Sch 3 Form 12. As to the use of forms see PARA 219 ante.

6 Ibid r 27.

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286. Application for special leave.

An application¹ for the special leave of the Copyright Tribunal² for a variation of an order³ must be made by the service⁴ on the secretary of the Tribunal by the applicant⁵ of a notice in the prescribed form⁶ together with a statement of the grounds for the application, and by serving a copy thereof on the other party⁷. Within 14 days⁸ of the service on him of a copy of such notice, the other party may make representations in writing to the Tribunal regarding the application for special leave; and he must serve a copy of any such representations on the applicant and inform the secretary of the date of such service⁹. Thereafter the procedure is the same as on a reference of a licensing scheme to the Tribunal¹⁰.

The Tribunal, after considering the application and any representations and, if it considers it necessary, after having given the applicant and any such party who has made such representations an opportunity of being heard, must grant or dismiss the application, with such order as to costs¹¹, as it may think fit; and if it grants the application, it may give such directions as to the taking of any steps required or authorised¹² or as to any further matter as the Tribunal thinks fit¹³. The decision of the Tribunal must be in writing and must include a statement of its reasons; and the secretary must serve a copy thereof on the applicant and on every party who made representations¹⁴.

1 Ie under the Copyright, Designs and Patents Act 1988 s 142(4) (as substituted): see PARA 284 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 Ie an order under the Copyright, Designs and Patents Act 1988 s 142 (as substituted): see PARA 284 ante.

4 As to the service of documents see PARA 215 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 28(1), Sch 3 Form 3 (substituted by SI 1991/201). As to the use of forms see PARA 219 ante.

7 Copyright Tribunal Rules 1989, SI 1989/1129, r 28(1).

8 As to the extension of time limits see PARA 216 ante.

9 Copyright Tribunal Rules 1989, SI 1989/1129, r 28(2).

10 Ibid r 29(2). This provides that rr 10-16 (see PARA 233 et seq ante) apply to proceedings in respect of an application under r 28 as they apply to proceedings in respect of an application under r 3 (see PARA 227 ante).

11 As to the Tribunal's power to award costs see PARA 220 ante.

12 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

13 Ibid r 28(3). As to failure to comply with directions see PARA 217 ante. As to appeals against decisions of the Tribunal see PARA 309 post.

14 Ibid r 28(4).

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287. Procedure and decision of the Tribunal.

Within 21 days¹ of the service of the notice² of commencement of proceedings the other party must serve³ on the secretary of the Copyright Tribunal⁴ his written answer to the applicant's⁵ statement, and must serve a copy of the same on the applicant and inform the secretary of the date of such service⁶. Thereafter the procedure is the same as on a reference of a licensing scheme to the Tribunal⁷.

The final decision of the Tribunal on such an application must be given in writing and must include a statement of the Tribunal's reasons, and there must be annexed to the decision a copy of the order and, where the Tribunal has varied a previous order, a copy of that order as varied; and the secretary must as soon as practicable serve on every party to the proceedings⁸ a copy of the Tribunal's decision⁹.

1 As to the extension of time limits see PARA 216 ante.

2 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 27: see PARA 285 ante.

3 As to the service of documents see PARA 215 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 Copyright Tribunal Rules 1989, SI 1989/1129, r 29(1).

7 Ibid r 29(2). This provides that rr 10-16 (see PARA 233 et seq ante) apply as they apply to proceedings in respect of an application under r 3 (see PARA 227 ante).

8 For the meaning of 'proceedings' see PARA 215 note 4 ante.

9 Copyright Tribunal Rules 1989, SI 1989/1129, r 29(3). Rules 18 and 19 (see PARA 240 ante) apply with regard to the publication and the effective date of the decision: r 29(3). As to appeals against orders of the Tribunal see PARA 309 post.

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288. Intervener's application.

A person who or organisation which claims to have a substantial interest in proceedings in respect of an application¹ to settle the royalty or other sum payable for the lending of certain works may² apply to the Copyright Tribunal³ to be made a party to the proceedings⁴.

1 Ie an application under the Copyright Tribunal Rules 1989, SI 1989/1129, r 27: see PARA 285 ante.

2 Ie in accordance with *ibid* r 23: see PARA 257 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 Copyright Tribunal Rules 1989, SI 1989/1129, r 30. Rule 23 (see PARA 257 ante) applies to proceedings in respect of such an application as it applies to proceedings in respect of an application under r 20 (see PARA 255 ante): r 30.

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(ix) References of Amount of Equitable Remuneration for Transfer of Rental Right

289. Reference of amount of equitable remuneration to the Tribunal.

In default of agreement as to the amount payable by way of equitable remuneration¹ on the transfer of rental right² in a sound recording³ or film⁴ to its producer⁵, the person by or to whom it is payable⁶ may apply to the Copyright Tribunal⁷ to determine the amount payable⁸.

A person to or by whom equitable remuneration is so payable may also apply to the Tribunal to vary any agreement as to the amount payable⁹ or to vary any previous determination of the Tribunal as to that matter¹⁰; but, except with the special leave of the Tribunal, no such application may be made within 12 months¹¹ from the date of a previous determination¹². An order made on such an application has effect from the date on which it is made or such later date as may be specified by the Tribunal¹³.

On an application under these provisions the Tribunal must consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the author¹⁴ to the film or sound recording¹⁵.

Remuneration is not to be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right¹⁶.

An agreement is of no effect in so far as it purports to prevent a person from questioning the amount of equitable remuneration or to restrict the powers of the Tribunal under these provisions¹⁷.

1 le under the Copyright, Designs and Patents Act 1988 s 93B (as added): see PARA 171 ante.

2 For the meaning of 'rental right' see PARA 170 note 4 ante.

3 For the meaning of 'sound recording' see PARA 84 ante.

4 For the meaning of 'film' see PARA 86 ante.

5 For the meaning of 'producer' see PARA 110 note 3 ante.

6 le the persons mentioned in the Copyright, Designs and Patents Act 1988 s 93B(1), (3) (as added): see PARA 171 ante.

7 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

8 Copyright, Designs and Patents Act 1988 s 93C(1) (s 93C added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 14(1)).

9 Copyright, Designs and Patents Act 1988 s 93C(2)(a) (as added: see note 8 supra).

10 Ibid s 93C(2)(b) (as added: see note 8 supra).

11 For the meaning of 'month' see PARA 185 note 18 ante.

12 Copyright, Designs and Patents Act 1988 s 93C(2) (as added: see note 8 supra).

13 Ibid s 93C(2) (as added: see note 8 supra).

14 For the meaning of 'author' see PARA 110 ante.

15 Copyright, Designs and Patents Act 1988 s 93C(3) (as added: see note 8 supra). As to appeals against orders of the Tribunal see PARA 309 post.

16 Ibid s 93C(4) (as added: see note 8 supra).

17 Ibid s 93C(5) (as added: see note 8 supra).

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290. Procedure on application.

There are no statutory provisions governing the procedure on an application¹ to determine the amount payable by way of equitable remuneration on the transfer of rental right in a sound recording or film to its producer.

¹ I.e. an application under the Copyright, Designs and Patents Act 1988 s 93C (as added): see PARA 289 ante.

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(x) Applications for Determination of Royalty or other Sum payable for the Reception and Retransmission of a Wireless Broadcast by Cable

291. Power to apply to the Tribunal.

An application¹ to settle the royalty or other sum payable for the reception and retransmission of a wireless broadcast² by cable may be made to the Copyright Tribunal³ by the copyright owner⁴ or the person making the broadcast⁵. The Tribunal must consider the matter and must make such order as it may determine to be reasonable in the circumstances⁶.

Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal must consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances⁷. Such an application may not, however, be made, except with the special leave of the Tribunal, within 12 months⁸ from the date of the original order or of the order on a previous such application⁹. An order made on an application to vary an order has effect from the date on which it is made or such later date as may be specified by the Tribunal¹⁰.

1 In pursuance of the Copyright, Designs and Patents Act 1988 s 73(4) (as substituted): see PARA 401 post.

2 For the meaning of 'wireless broadcast' see PARA 88 note 8 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

5 Copyright, Designs and Patents Act 1988 s 73A(1) (s 73A added by the Broadcasting Act 1996 s 138, Sch 9 para 1; and the Copyright, Designs and Patents Act 1988 s 73A(1) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(2)). As to references to 'the person making a broadcast' see PARA 89 ante.

6 Copyright, Designs and Patents Act 1988 s 73A(2) (as added: see note 5 supra). Section 134 (as amended) (see PARA 271 ante) does not apply in relation to any application under s 73A (as added and amended): s 134(3A) (added by the Broadcasting Act 1996 s 138, Sch 9 para 2(3)).

7 Copyright, Designs and Patents Act 1988 s 73A(3) (as added: see note 5 supra). See also note 6 supra.

8 For the meaning of 'month' see PARA 185 note 18 ante.

9 Copyright, Designs and Patents Act 1988 s 73A(4) (as added: see note 5 supra).

10 Ibid s 73A(5) (as added: see note 5 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(x) Applications for Determination of Royalty or other Sum payable for the Reception and Retransmission of a Wireless Broadcast by Cable/292. Procedure on application.

292. Procedure on application.

There are no provisions governing the procedure on an application¹ to settle the royalty or other sum payable for the reception and retransmission of a wireless broadcast by cable.

¹ ie under the Copyright, Designs and Patents Act 1988 s 73A (as added): see PARA 291 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xi) Applications to settle Terms of Licences of Right/293. Application to settle terms of licence of right.

(xi) Applications to settle Terms of Licences of Right

293. Application to settle terms of licence of right.

Where the Secretary of State, the Office of Fair Trading or the Competition Commission¹ has ordered² that licences are to be available as of right in respect of a copyright work³, then, in default of agreement between the copyright owner⁴ and the prospective licensee, the terms of such a licence must be settled by the Copyright Tribunal⁵ on an application by the person requiring the licence⁶. The terms so settled must authorise the licensee to do everything in respect of which a licence is so available⁷.

Where the terms of a licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made⁸.

1 As to the Secretary of State see PARA 183 note 2 ante. As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6; and as to the Competition Commission see COMPETITION vol 18 (2009) PARA 9-12.

2 I.e. under the Copyright, Designs and Patents Act 1988 s 144(1)-(3) (as amended): see PARA 192 ante.

3 As to copyright works see PARA 57 ante.

4 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

5 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

6 Copyright, Designs and Patents Act 1988 s 144(4). As to the procedure on such an application see PARAS 294-296 post.

7 Ibid s 144(4).

8 Ibid s 144(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xi) Applications to settle Terms of Licences of Right/294. Commencement of proceedings.

294. Commencement of proceedings.

Proceedings in relation to an application by a person requiring a licence of right¹ must be commenced by the service² on the secretary of the Copyright Tribunal³ by the applicant⁴ of a notice in the prescribed form⁵ with a statement of the terms required and the reasons for these; and he must serve a copy of the same on the copyright owner⁶.

1 In the circumstances described in the Copyright, Designs and Patents Act 1988 s 144(4): see PARA 293 ante.

2 As to the service of documents see PARA 215 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 For the meaning of 'applicant' see PARA 227 note 5 ante.

5 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 31, Sch 3 Form 13. As to the use of forms see PARA 219 ante.

6 Ibid r 31. For the meaning of 'copyright' see PARA 57 ante; and as to who is the owner of the copyright in a work see PARA 118 et seq ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xi) Applications to settle Terms of Licences of Right/295. Procedure and decision of the Tribunal.

295. Procedure and decision of the Tribunal.

Within 21 days¹ of the service of the notice², the copyright owner³ may serve⁴ on the secretary of the Copyright Tribunal⁵ his written answer setting out the grounds of his objection and the terms of the licence which he considers the Tribunal should settle, and must serve a copy of the same on the applicant⁶ and inform the secretary of the date of such service⁷. Thereafter the procedure is the same as on a reference of a licensing scheme to the Tribunal⁸.

The final decision of the Tribunal on such an application must be given in writing and must include a statement of the Tribunal's reasons; and the secretary must as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision⁹.

1 As to the extension of time limits see PARA 216 ante.

2 See under the Copyright Tribunal Rules 1989, SI 1989/1129, r 31: see PARA 294 ante.

3 For the meaning of 'copyright' see PARA 57 ante; and as to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 As to the service of documents see PARA 215 ante.

5 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

6 For the meaning of 'applicant' see PARA 227 note 5 ante.

7 Copyright Tribunal Rules 1989, SI 1989/1129, r 32(1).

8 Ibid r 32(2). This provides that rr 10-16 (see PARA 233 et seq ante) apply as they apply to proceedings in respect of an application under r 3 (see PARA 227 ante).

9 Ibid r 32(3). Rule 18 (see PARA 240 ante) applies with regard to the publication of the decision: r 32(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xi) Applications to settle Terms of Licences of Right/296. Intervener's application.

296. Intervener's application.

A person who or organisation which claims to have a substantial interest in proceedings in respect of an application¹ by a person requiring a licence of right may² apply to the Copyright Tribunal³ to be made a party to the proceedings⁴.

1 le under the Copyright Tribunal Rules 1989, SI 1989/1129, r 31: see PARA 294 ante.

2 le in accordance with *ibid* r 23: see PARA 257 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 Copyright Tribunal Rules 1989, SI 1989/1129, r 33. Rule 23 (see PARA 257 ante) applies to proceedings in respect of such an application as it applies to proceedings in respect of an application under r 20 (see PARA 255 ante): r 33.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xii) Applications to settle Royalty in respect of Revived Copyright/297. Application to settle royalty.

(xii) Applications to settle Royalty in respect of Revived Copyright

297. Application to settle royalty.

In the case of a work in which revived copyright¹ subsists, any acts restricted by the copyright² are treated as licensed by the copyright owner³, subject only to the payment of such reasonable royalty or other remuneration as may be agreed or determined, in default of agreement, by the Copyright Tribunal⁴.

An application to the Tribunal may be made by the copyright owner or the person claiming to be treated as licensed by him⁵. The Tribunal must consider the matter and must make such order as it may determine to be reasonable in the circumstances⁶.

Either party may subsequently apply to the Tribunal to vary the order; and the Tribunal must consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances⁷. An application may not, however, be so made, except with the special leave of the Tribunal, within 12 months⁸ from the date of the original order or of the order on a previous such application⁹. An order of the Tribunal varying an order has effect from the date on which it is made or such later date as may be specified by the Tribunal¹⁰.

1 For the meaning of 'revived copyright' see PARA 93 note 18 ante.

2 For the meaning of 'copyright' see PARA 57 ante. For the meaning of 'acts restricted by the copyright' see PARA 311 post.

3 As to who is the owner of revived copyright see PARA 141 ante.

4 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 24(1). As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 Ibid reg 25(1).

6 Ibid reg 25(2).

7 Ibid reg 25(3).

8 For the meaning of 'month' see PARA 185 note 18 ante.

9 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 25(4).

10 Ibid reg 25(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xii) Applications to settle Royalty in respect of Revived Copyright/298. Procedure on application.

298. Procedure on application.

There are no provisions governing the procedure on an application¹ to settle the royalty in respect of revived copyright.

¹ See rule 14 under the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 25: see PARA 297 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xiii) Applications for Determination of Royalty payable to the Hospital for Sick Children, Great Ormond Street, London/299. Application for determination of royalty.

(xiii) Applications for Determination of Royalty payable to the Hospital for Sick Children, Great Ormond Street, London

299. Application for determination of royalty.

The trustees of the Hospital for Sick Children, Great Ormond Street, London are entitled to a royalty in respect of any public performance, commercial publication or communication to the public of the whole or any substantial part of the play 'Peter Pan' by Sir James Matthew Barrie or an adaptation of it¹.

In default of agreement as to the appropriate royalty, application may be made to the Copyright Tribunal² which must consider the matter and make such order regarding the royalty or other remuneration to be paid as it may determine to be reasonable in the circumstances³.

Application may subsequently be made to the Tribunal to vary its order; and the Tribunal must consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances⁴. However, an application for variation may not be made, except with the special leave⁵ of the Tribunal, within 12 months⁶ from the date of the original order or of the order on a previous application for variation⁷. A variation order has effect from the date on which it is made or such later date as may be specified by the Tribunal⁸.

1 See the Copyright, Designs and Patents Act 1988 s 301, Sch 6 para 2(1) (as amended); and PARA 143 ante. Where the trustees are or would be entitled to a royalty, any other form of remuneration may be agreed: see Sch 6 para 2(2); and PARA 143 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

3 Copyright, Designs and Patents Act 1988 Sch 6 para 5(1). The provisions of Pt I Ch VIII (ss 145-152) (as amended) (see PARA 207 et seq ante) apply in relation to the Tribunal when exercising any jurisdiction under Sch 6 para 5 (as amended): Sch 6 para 5(5) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 24(3)). As to the procedure on an application see PARAS 300-303 post. As to appeals against orders of the Tribunal see PARA 309 post.

4 Copyright, Designs and Patents Act 1988 Sch 6 para 5(2). See also note 3 supra.

5 As to applications for special leave see PARA 301 post.

6 For the meaning of 'month' see PARA 185 note 18 ante.

7 Copyright, Designs and Patents Act 1988 Sch 6 para 5(3).

8 Ibid Sch 6 para 5(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xiii) Applications for Determination of Royalty payable to the Hospital for Sick Children, Great Ormond Street, London/300. Commencement of proceedings.

300. Commencement of proceedings.

Proceedings¹ for the determination of the royalty or other remuneration to be paid to the Hospital for Sick Children, Great Ormond Street, London must be commenced by the service² on the secretary of the Copyright Tribunal³ by the applicant⁴ of a notice in the prescribed form⁵, together with a statement of the applicant's case, and by serving a copy thereof on the other party⁶.

1 le under the Copyright, Designs and Patents Act 1988 s 301, Sch 6 para 5 (as amended): see PARA 299 ante.

2 As to the service of documents see PARA 215 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 For the meaning of 'applicant' see PARA 227 note 5 ante.

5 For the prescribed form of notice in the case of an application under the Copyright, Designs and Patents Act 1988 Sch 6 para 5(1) (see PARA 299 ante) to determine the royalty see the Copyright Tribunal Rules 1989, SI 1989/1129, r 38(a), Sch 3 Form 15 (amended by SI 2003/2498). For the prescribed form of notice in the case of an application under the Copyright, Designs and Patents Act 1988 Sch 6 para 5(2) (see PARA 299 ante) for review see the Copyright Tribunal Rules 1989, SI 1989/1129, r 38(b), Sch 3 Form 16. As to the use of forms see PARA 219 ante.

6 Ibid r 38.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xiii) Applications for Determination of Royalty payable to the Hospital for Sick Children, Great Ormond Street, London/301. Application for special leave.

301. Application for special leave.

An application for the special leave of the Copyright Tribunal¹ for the review of an order² must be made by serving³ on the secretary of the Tribunal a notice in the prescribed form⁴, together with a statement of the grounds for the application, and by serving a copy thereof on the person who was a party to the proceedings when the order of the Tribunal was made⁵. Within 14 days⁶ of the service on him of a copy of the notice, the other party may make representations in writing to the Tribunal regarding the application for special leave, and he must serve a copy of any such representations on every other party to the proceedings⁷ and inform the secretary of the date of such service⁸. Thereafter the procedure is the same as on a reference of a licensing scheme to the Tribunal⁹.

The Tribunal, after considering the application and any representations and, if it considers it necessary, after having given the applicant and any such party who has made such representations an opportunity of being heard, must grant or dismiss the application, with such order as to costs¹⁰, as it may think fit; and if it grants the application, it may give such directions as to the taking of any steps required or authorised¹¹ or as to any further matter as the Tribunal thinks fit¹². The decision of the Tribunal must be in writing and must include a statement of its reasons; and the secretary must serve a copy thereof on the applicant and on any party who made representations¹³.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 le under the Copyright, Designs and Patents Act 1988 s 301, Sch 6 para 5(3): see PARA 299 ante.

3 As to the service of documents see PARA 215 ante.

4 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 39(1), Sch 3 Form 3 (substituted by SI 1991/201). As to the use of forms see PARA 219 ante.

5 Copyright Tribunal Rules 1989, SI 1989/1129, r 39(1).

6 As to the extension of time limits see PARA 216 ante.

7 For the meaning of 'proceedings' see PARA 215 note 4 ante.

8 Copyright Tribunal Rules 1989, SI 1989/1129, r 39(2).

9 Ibid r 40(2). This provides that rr 10-16 (see PARA 233 et seq ante) apply as they apply to proceedings in respect of an application under r 3 (see PARA 227 ante).

10 As to the Tribunal's power to award costs see PARA 220 ante.

11 le under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

12 Ibid r 39(3). As to failure to comply with directions see PARA 217 ante.

13 Ibid r 39(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xiii) Applications for Determination of Royalty payable to the Hospital for Sick Children, Great Ormond Street, London/302. Procedure and decision of the Tribunal.

302. Procedure and decision of the Tribunal.

Within 21 days¹ of the service of the notice² of commencement of proceedings, the other party must serve³ on the secretary of the Copyright Tribunal⁴ a written answer to the applicant's⁵ statement, and must serve a copy of the same on the applicant and inform the secretary of the date of such service⁶. Thereafter the procedure is the same as on a reference of a licensing scheme to the Tribunal⁷.

The final decision of the Tribunal on an application⁸ must be given in writing and must include a statement of the Tribunal's reasons and, where the Tribunal has varied a previous order, there must be annexed to the decision a copy of that order as varied; and the secretary must as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision⁹.

1 As to the extension of time limits see PARA 216 ante.

2 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 38: see PARA 300 ante.

3 As to the service of documents see PARA 215 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 Copyright Tribunal Rules 1989, SI 1989/1129, r 40(1).

7 Ibid r 40(2). This provides that rr 10-16 (see PARA 233 et seq ante) apply as they apply to proceedings in respect of an application under r 3 (see PARA 227 ante).

8 Ie an application under ibid r 38: see PARA 300 ante.

9 Ibid r 40(3). Rule 18 (see PARA 240 ante) applies with regard to the publication of the decision: r 40(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xiii) Applications for Determination of Royalty payable to the Hospital for Sick Children, Great Ormond Street, London/303. Intervener's application.

303. Intervener's application.

A person who or organisation which claims to have a substantial interest in proceedings in respect of an application¹ for the determination of the royalty or other remuneration to be paid to the Hospital for Sick Children, Great Ormond Street, London may² apply to the Copyright Tribunal³ to be made a party to the proceedings⁴.

1 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 38: see PARA 300 ante.

2 Ie in accordance with *ibid* r 23: see PARA 257 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 Copyright Tribunal Rules 1989, SI 1989/1129, r 41. Rule 23 (see PARA 257 ante) applies to proceedings in respect of such an application as it applies to proceedings in respect of an application under r 20 (see PARA 255 ante): r 41.

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(xiv) Applications to settle Terms of Payment for Licences of Right in Programme Listings

304. Application to settle payment terms.

A person who provides a television or national radio programme service¹ is under a statutory duty to make available information about the time, date and title of any programmes to be included in the service to any person who wishes to publish such information in the United Kingdom² and who has requested such information and who reasonably requires it³. This programme listing information is protected by copyright⁴ and, subject to certain conditions, any person is entitled to a licence of right to publish the programme listing information provided to him⁵. In particular, before exercising the statutory right, the publisher⁶ must give reasonable notice to the Copyright Tribunal⁷ of his intention to do so and of the date on which he proposes to begin to do so and must apply to the Tribunal to settle the terms of payment⁸.

On an application to settle the terms of payment, the Tribunal must consider the matter and make such order as it may determine to be reasonable in the circumstances⁹. Such an order has effect from the date the applicant begins to exercise his statutory right¹⁰ and any necessary repayments, or further payments, must be made in respect of amounts that have fallen due¹¹.

A person exercising the statutory right or the person providing the programme service may apply to the Tribunal to review any order so made¹². However, such an application may not be made, except with the special leave¹³ of the Tribunal, within 12 months¹⁴ from the date of the order or the decision on a previous such application¹⁵ or, if the order was made so as to be in force for 15 months or less, or as a result of a decision on a previous application is due to expire within 15 months of that decision, until the last three months before the expiry date¹⁶. On the application the Tribunal must consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances¹⁷. A variation order has effect from the date on which it is made or such later date as may be specified by the Tribunal¹⁸.

1 For the meaning of 'programme service', and as to the persons providing such a service, see PARA 198 note 1 ante.

2 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

3 See the Broadcasting Act 1990 s 176 (as amended); and PARA 198 ante.

4 *Independent Television Publications Ltd v Time Out Ltd and Elliott, British Broadcasting Corp'n v Time Out Ltd and Elliott* [1984] FSR 64. For the meaning of 'copyright' see PARA 57 ante.

5 See the Broadcasting Act 1990 s 176, Sch 17 (as amended); and PARA 199 et seq ante.

6 References to anything done by the publisher include anything done on his behalf: *ibid* Sch 17 para 7(2). For the meaning of 'publisher' see PARA 198 ante.

7 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

8 See the Broadcasting Act 1990 Sch 17 para 3(2); and PARA 200 ante. A number of test cases have been brought: see *News Group Newspapers Ltd v Independent Television Publications Ltd* [1993] RPC 173, Copyright Tribunal.

- 9 Broadcasting Act 1990 Sch 17 para 5(1). As to the application see PARAS 305-308 post.
- 10 le the right conferred by ibid Sch 17 para 4: see PARA 201 ante.
- 11 Ibid Sch 17 para 5(2).
- 12 Ibid Sch 17 para 6(1).
- 13 As to applications for special leave see PARA 306 post.
- 14 For the meaning of 'month' see PARA 185 note 18 ante.
- 15 Broadcasting Act 1990 Sch 17 para 6(2)(a).
- 16 Ibid Sch 17 para 6(2)(b).
- 17 Ibid Sch 17 para 6(3).
- 18 Ibid Sch 17 para 6(4).

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305. Commencement of proceedings.

Proceedings¹ for the settlement of terms of payment to be made by a publisher to a person providing a programme service² must be commenced by the service³ on the secretary of the Copyright Tribunal⁴ by the applicant⁵ of a notice in the prescribed form⁶, together with a statement of the applicant's case⁷.

As soon as practicable after receipt of the notice, the secretary must serve a copy of the same, with a copy of the applicant's statement, on the person providing the programme service named in the notice and, in the case of an application for review of an order⁸, on every person who was a party to the proceedings when the original order of the Tribunal was made⁹.

Except where the chairman¹⁰ otherwise directs, the secretary must give notice by advertisement in such manner as the chairman may think fit of every reference or application¹¹.

1 le under the Broadcasting Act 1990 s 176, Sch 17 (as amended): see PARA 304 ante.

2 For the meaning of 'programme service', and as to the persons providing such a service, see PARA 198 note 1 ante; definition applied by the Copyright Tribunal Rules 1989, SI 1989/1129, r 2(1) (amended by SI 1991/201).

3 As to the service of documents see PARA 215 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 For the prescribed form of notice in the case of an application under the Broadcasting Act 1990 Sch 17 para 5(1) (see PARA 304 ante) to settle terms of payment see the Copyright Tribunal Rules 1989, SI 1989/1129, r 41A(1)(a), Sch 3 Form 16A (r 41A, Sch 3 Forms 16A, 16B added by SI 1991/201). For the prescribed form of notice in the case of an application under the Broadcasting Act 1990 Sch 17 para 6(1) (see PARA 304 ante) for review of an order see the Copyright Tribunal Rules 1989, SI 1989/1129, r 41A(1)(b), Sch 3 Form 16B (as so added). As to the use of forms see PARA 219 ante.

7 Ibid r 41A(1) (as added: see note 6 supra).

8 le under the Broadcasting Act 1990 Sch 17 para 6(1): see PARA 304 ante.

9 Copyright Tribunal Rules 1989, SI 1989/1129, r 41A(2) (as added: see note 6 supra).

10 For the meaning of 'the chairman' see PARA 215 note 10 ante.

11 Copyright Tribunal Rules 1989, SI 1989/1129, r 41A(3) (as added: see note 6 supra).

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306. Application for special leave.

An application for the special leave of the Copyright Tribunal¹ for the review of an order² must be made by serving³ on the secretary of the Tribunal a notice in the prescribed form⁴, together with a statement of the grounds for the application⁵. The applicant⁶ must serve a copy of the notice and statement on every person who was a party to the application when the order of the Tribunal was made⁷. Within 14 days⁸ of the service on him of a copy of such notice, the other party may make representations in writing to the Tribunal regarding the application for special leave, and he must serve a copy of any such representations on every other party to the proceedings⁹ and inform the secretary of the date of such service¹⁰. Thereafter the procedure is the same as on a reference of a licensing scheme to the Tribunal¹¹.

The Tribunal, after considering the application and any representations and, if it considers it necessary, after having given the applicant and any such party who has made representations an opportunity of being heard, must grant or dismiss the application for special leave, with such order as to costs¹², as it may think fit; and if it grants the application, it may give such directions as to the taking of any steps required or authorised¹³ or as to any further matter as the Tribunal thinks fit¹⁴. The decision of the Tribunal must be in writing and must include a statement of its reasons; and the secretary must serve a copy thereof on the applicant and on any party who made representations¹⁵.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 le under the Broadcasting Act 1990 s 176, Sch 17 para 6(2): see PARA 304 ante.

3 As to the service of documents see PARA 215 ante.

4 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 41B(1), Sch 3 Form 3 (r 41B added, and Sch 3 Form 3 substituted, by SI 1991/201). As to the use of forms see PARA 219 ante.

5 Copyright Tribunal Rules 1989, SI 1989/1129, r 41B(1) (as added: see note 4 supra).

6 For the meaning of 'applicant' see PARA 227 note 5 ante.

7 Copyright Tribunal Rules 1989, SI 1989/1129, r 41B(1) (as added: see note 4 supra).

8 As to the extension of time limits see PARA 216 ante.

9 For the meaning of 'proceedings' see PARA 215 note 4 ante.

10 Copyright Tribunal Rules 1989, SI 1989/1129, r 41B(2) (as added: see note 4 supra).

11 Ibid r 41C(2) (added by SI 1991/201). This provides that the Copyright Tribunal Rules 1989, SI 1989/1129, rr 10-16 (see PARA 233 et seq ante) apply as they apply to proceedings in respect of an application under r 3 (see PARA 227 ante).

12 As to the Tribunal's power to award costs see PARA 220 ante.

13 le under the Copyright Tribunal Rules 1989, SI 1989/1129 (as amended).

14 Ibid r 41B(3) (as added: see note 4 supra). As to failure to comply with directions see PARA 217 ante.

15 Ibid r 41B(4) (as added: see note 4 supra). As to appeals against orders of the Tribunal see PARA 309 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xiv) Applications to settle Terms of Payment for Licences of Right in Programme Listings/307. Procedure and decision of the Tribunal.

307. Procedure and decision of the Tribunal.

Within 21 days¹ of the service of the notice² of commencement of proceedings, the other party must serve³ on the secretary of the Copyright Tribunal⁴ a written answer to the applicant's⁵ statement, and must serve a copy of the same on the applicant and inform the secretary of the date of service⁶. Thereafter the procedure is the same as on a reference of a licensing scheme to the Tribunal⁷.

The final decision of the Tribunal on an application⁸ must be given in writing and must include a statement of the Tribunal's reasons, and there must be annexed to the decision a copy of the order and, where the Tribunal has varied a previous order, a copy of that order as varied; and the secretary must as soon as practicable serve on every party to the proceedings⁹ a copy of the Tribunal's decision¹⁰.

1 As to the extension of time limits see PARA 216 ante.

2 le under the Copyright Tribunal Rules 1989, SI 1989/1129, r 41A (as added): see PARA 305 ante.

3 As to the service of documents see PARA 215 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

5 For the meaning of 'applicant' see PARA 227 note 5 ante.

6 Copyright Tribunal Rules 1989, SI 1989/1129, r 41C(1) (r 41C added by SI 1991/201).

7 Ibid r 41C(2) (as added: see note 6 supra). This provides that rr 10-16 (see PARA 233 et seq ante) apply as they apply to proceedings in respect of an application under r 3 (see PARA 227 ante).

8 le under ibid r 41A (as added): see PARA 305 ante.

9 For the meaning of 'proceedings' see PARA 215 note 4 ante.

10 Copyright Tribunal Rules 1989, SI 1989/1129, r 41C(3) (as added: see note 6 supra). Rule 18 (see PARA 240 ante) applies with regard to the publication of the decision: r 41C(3) (as so added). As to appeals against decisions of the Tribunal see PARA 309 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(7) THE COPYRIGHT TRIBUNAL/(xiv) Applications to settle Terms of Payment for Licences of Right in Programme Listings/308. Intervener's application.

308. Intervener's application.

A person who or organisation which claims to have a substantial interest in proceedings in respect of an application¹ for the settlement of terms of payment to be made by a publisher to a person providing a programme service may² apply to the Copyright Tribunal³ to be made a party to that application⁴.

1 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 41A (as added): see PARA 305 ante.

2 Ie in accordance with *ibid* r 23: see PARA 257 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

4 Copyright Tribunal Rules 1989, SI 1989/1129, r 41D (added by SI 1991/201). The Copyright Tribunal Rules 1989, SI 1989/1129, r 23 (see PARA 257 ante) applies to proceedings in respect of such an application as it applies to proceedings in respect of an application under r 20 (see PARA 255 ante): r 41D (as so added).

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(xv) Appeals

309. Appeal to the court on a point of law.

An appeal lies on any point of law arising from a decision of the Copyright Tribunal¹ to the High Court². The appeal must be brought within 28 days³ of the date of the Tribunal's decision or such further time as the court may, on an application to it, allow⁴. The appeal must be brought in the Chancery Division⁵.

A party appealing to the court on a point of law must, as soon as may be practicable, serve⁶ on the secretary of the Tribunal a notice in the prescribed form⁷ of such an appeal and must serve a copy of it on every person who was a party to the proceedings⁸ giving rise to the decision in relation to which the appeal is brought⁹.

Where an appeal has been lodged with the court, the Tribunal must not make any further order on the reference or application which is the subject of the appeal until the court has given its decision thereon¹⁰.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 Copyright, Designs and Patents Act 1988 s 152(1). As to the High Court see COURTS vol 10 (Reissue) para 602 et seq.

3 This time limit cannot be extended by the Tribunal, the chairman or the parties: see the Copyright Tribunal Rules 1989, SI 1989/1129, r 51(1); and PARA 216 ante.

4 Ibid r 42(1).

5 See CPR 63.1, 63.13. As to the procedure see Practice Direction--Patents and other Intellectual Property Claims PD63.

6 As to the service of documents see PARA 215 ante.

7 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 42(2), Sch 3 Form 17. As to the use of forms see PARA 219 ante.

8 For the meaning of 'proceedings' see PARA 215 note 4 ante.

9 Copyright Tribunal Rules 1989, SI 1989/1129, r 42(2).

10 Ibid r 42(3).

UPDATE

309 Appeal to the court on a point of law

NOTE 5--CPR 63.1 amended: SI 2005/3515.

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310. Suspension of the Tribunal's orders.

On receipt by the secretary of the Copyright Tribunal¹ of the notice of appeal² to the High Court, the Tribunal may of its own motion suspend the operation of any order contained in its decision, and must, if an order is so suspended, cause notice of the same to be served³ on every person affected by the suspension; and it may, if it thinks fit, cause notice of the suspension to be published in such manner as it may direct⁴.

A party to the proceedings⁵ may, pending the determination of an appeal⁶, apply to the Tribunal to suspend the operation of an order made by it by serving on the secretary a notice in the prescribed form⁷ within seven days⁸ of the receipt of the decision of the Tribunal together with a statement of the grounds for suspension; and he must serve a copy of the same on every person who was a party to the proceedings giving rise to that decision and inform the secretary of the date of such service⁹. Within 14 days of the service of that notice a party may serve on the secretary a statement setting out the grounds of his objection to the applicant's case, and must serve a copy of the same on every person who was a party to the proceedings giving rise to the decision and inform the secretary of the date of such service¹⁰. Thereafter the procedure is the same as on a reference of a licensing scheme to the Tribunal¹¹.

Where the Tribunal, after consideration of the application and any representations, refuses an application to suspend the operation of the order, the secretary must as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision together with a statement of the Tribunal's reasons for refusal¹². Where any order of the Tribunal has been suspended on the application of a party to the proceedings or by the court, the secretary must serve notice of the suspension on all parties to the proceedings, and, if particulars of the order have been advertised, must cause notice of the suspension to be advertised in the same manner¹³.

A person who or organisation which claims to have a substantial interest in proceedings in respect of an application¹⁴ for suspension of an order may apply¹⁵ to the Tribunal to be made a party to the proceedings¹⁶.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its membership see PARA 208 ante.

2 As to the notice of appeal see PARA 309 ante.

3 As to the service of documents see PARA 215 ante.

4 Copyright Tribunal Rules 1989, SI 1989/1129, r 42(4). If the operation of an order is suspended under r 42 or r 43 (see the text and notes 5-13 infra), then, while the order remains suspended, the Copyright, Designs and Patents Act 1988 s 123 (see PARA 244 ante) and s 128 (see PARA 263 ante) do not have effect in relation to the order: Copyright Tribunal Rules 1989, SI 1989/1129, r 45.

5 For the meaning of 'proceedings' see PARA 215 note 4 ante.

6 Ie under the Copyright Tribunal Rules 1989, SI 1989/1129, r 42: see PARA 309 ante.

7 For the prescribed form of notice see *ibid* r 43(1), Sch 3 Form 18. As to the use of forms see PARA 219 ante.

8 As to the extension of time limits see PARA 216 ante.

9 Copyright Tribunal Rules 1989, SI 1989/1129, r 43(1).

10 Ibid r 43(2).

11 Ibid r 43(3). This provides that rr 10-16 (see PARA 233 et seq ante) apply to proceedings in respect of an application under r 43 as they apply to proceedings in respect of an application under r 3 (see PARA 227 ante).

12 Ibid r 43(4).

13 Ibid r 43(5). Rule 18 (see PARA 240 ante) applies with regard to the publication of the decision: r 43(5).

14 Ie under ibid r 43: see the text to notes 5-13 supra.

15 Ie in accordance with ibid r 23: see PARA 257 ante.

16 Ibid r 44. Rule 23 applies to proceedings in respect of such an application as it applies in respect of an application under r 20 (see PARA 255 ante): r 44.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(8) ACTS RESTRICTED BY COPYRIGHT/(i) Infringement/311. The acts restricted by copyright in the work.

(8) ACTS RESTRICTED BY COPYRIGHT

(i) Infringement

311. The acts restricted by copyright in the work.

The owner of the copyright¹ in a work has² the exclusive right³ to do the following acts in the United Kingdom⁴:

- 235 (1) to copy the work⁵;
- 236 (2) to issue copies of the work to the public⁶;
- 237 (3) to rent or lend the work to the public⁷;
- 238 (4) to perform, show or play the work in public⁸;
- 239 (5) to communicate the work to the public⁹;
- 240 (6) to make an adaptation of the work or do any of the above in relation to an adaptation¹⁰,

and those acts are referred to in the Copyright, Designs and Patents Act 1988¹¹ as the 'acts restricted by the copyright'¹².

1 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

2 Ie subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

3 Ie in accordance with ibid Pt I Ch II (ss 16-27) (as amended): see PARA 312 et seq post.

4 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

5 Copyright, Designs and Patents Act 1988 s 16(1)(a). As to such acts see s 17 (as amended); and PARA 314 post.

6 Ibid s 16(1)(b). As to such acts see s 18 (as amended); and PARA 322 post.

7 Ibid s 16(1)(ba) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 10(1)). As to such acts see the Copyright, Designs and Patents Act 1988 s 18A (as added and amended); and PARA 323 post.

8 Ibid s 16(1)(c). As to such acts see s 19 (as amended); and PARA 324 post.

9 Ibid s 16(1)(d) (substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 6(2)). As to such acts see the Copyright, Designs and Patents Act 1988 s 20 (as substituted); and PARA 326 post.

10 Ibid s 16(1)(e). As to such acts see s 21 (as amended); and PARA 327 post.

11 Ie in ibid Pt I (ss 1-179) (as amended).

12 Ibid s 16(1), (4).

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312. What constitutes infringement.

Copyright¹ in a work is infringed² by a person who without the licence of the copyright owner³ does, or authorises⁴ another to do, any of the acts restricted by the copyright⁵.

References⁶ to the doing of an act restricted by the copyright in a work are references to the doing of it in relation to the work as a whole or any substantial part of it⁷ and either directly or indirectly⁸; and it is immaterial whether any intervening acts themselves infringe copyright⁹.

1 For the meaning of 'copyright' see PARA 57 ante.

2 Ie subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

3 As to references to the licence of the copyright owner see PARAS 121, 175 notes 4, 6 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 As to authorising infringements see PARA 328 post.

5 Copyright, Designs and Patents Act 1988 s 16(2), (4). For the meaning of 'acts restricted by the copyright' see PARA 311 ante. Acts committed before 1 August 1989 were governed by the Copyright Act 1956 (repealed); and claims based on all such infringements are now statute-barred.

6 Ie in the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

7 Ibid s 16(3)(a). For the meaning of 'substantial part' see PARA 321 post.

8 Ibid s 16(3)(b).

9 Ibid s 16(3).

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313. Revived copyright; acts of exploitation when work is in the public domain.

Copyright¹ has been revived in a number of works previously in the public domain owing to the extension of the term of copyright effected by the Duration of Copyright and Rights in Performances Regulations 1995². However, no act done before 1 January 1996³ is to be regarded as infringing the revived copyright in a work⁴. Further, it is not an infringement of revived copyright in a work:

- 241 (1) to do anything on or after 1 January 1996 in pursuance of arrangements⁵ made before 1 January 1995 at a time when copyright did not subsist in the work⁶, or to issue to the public⁷ on or after 1 January 1996 copies of the work made before 1 July 1995 at a time when copyright did not subsist in the work⁸;
- 242 (2) to do anything on or after 1 January 1996 in relation to a literary⁹, dramatic¹⁰, musical¹¹ or artistic¹² work or a film¹³ made before that date, or made in pursuance of arrangements made before that date, which contains a copy of that work or is an adaptation¹⁴ of that work if the copy or adaptation was made before 1 July 1995 at a time when copyright did not subsist in the work in which revived copyright subsists¹⁵, or the copy or adaptation was made in pursuance of arrangements made before 1 July 1995 at a time when copyright did not subsist in the work in which revived copyright subsists¹⁶;
- 243 (3) to do on or after 1 January 1996 anything which is a restricted act¹⁷ in relation to the work if the act is done at a time when, or is done in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise¹⁸ the act cannot by reasonable inquiry be ascertained¹⁹.

1 For the meaning of 'copyright' see PARA 57 ante.

2 I.e. the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended). As to duration of copyright generally, and as to revived copyright, see PARA 93 et seq ante.

3 I.e. the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: reg 1(2).

4 Ibid reg 23(1). For the meaning of 'revived copyright' see PARA 93 note 18 ante.

5 'Arrangements' means arrangements for the exploitation of the work in question: ibid reg 23(5).

6 Ibid reg 23(2)(a).

7 For the meaning of 'issue copies to the public' see PARA 322 post.

8 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 23(2)(b). See Case C-60/98 *Butterfly Music srl v Carosello Edizioni Musicali e Discografiche srl* [1999] ECR I-3939, [2000] 1 CMLR 587, ECJ, in which it was held that national legislation which permitted persons, who were reproducing and marketing sound-recordings in respect of which the rights of use had expired under previous legislation, to distribute those works for a limited period after the revival of copyright in them, was lawful.

9 For the meaning of 'literary work' see PARA 67 ante.

10 For the meaning of 'dramatic work' see PARA 73 ante.

11 For the meaning of 'musical work' see PARA 73 ante.

- 12 For the meaning of 'artistic work' see PARA 75 ante.
- 13 For the meaning of 'film' see PARA 86 ante.
- 14 For the meaning of 'adaptation' see PARA 327 ante.
- 15 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 23(3)(a).
- 16 Ibid reg 23(3)(b).
- 17 For the meaning of 'acts restricted by the copyright' see PARA 311 ante.
- 18 As to who is the owner of revived copyright see PARA 141 ante.
- 19 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 23(4).

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(ii) Modes of Infringement

A. COPYING

314. Infringement of copyright by copying.

The copying of the work is¹ an act restricted by the copyright² in every description of copyright work³; and references⁴ to copying and copies are to be construed as follows⁵.

Copying in relation to a literary⁶, dramatic⁷, musical⁸ or artistic⁹ work means reproducing the work in any material form¹⁰. This includes storing¹¹ the work in any medium by electronic¹² means¹³. In relation to an artistic work copying includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work¹⁴.

Copying in relation to a film¹⁵ or broadcast¹⁶ includes making a photograph¹⁷ of the whole or any substantial part¹⁸ of any image forming part of the film or broadcast¹⁹.

Copying in relation to the typographical arrangement of a published edition²⁰ means making a facsimile copy²¹ of the arrangement²².

Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work²³.

1 le subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

2 For the meaning of 'copyright' see PARA 57 ante. For the meaning of 'acts restricted by the copyright' see PARA 311 ante.

3 For the meaning of 'copyright work' see PARA 57 ante. What the copyright work is in any given case is not governed by what the claimant alleging copyright infringement chooses to say that it is, but is a matter for objective determination by the court: *IPC Media Ltd v Highbury-SPL Publishing Ltd* [2004] EWHC 2985 (Ch), [2004] All ER (D) 342 (Dec); *Coffey v Warner/Chappell Music Ltd* [2005] EWHC 449 (Ch), [2005] All ER (D) 329 (Mar).

4 le in the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

5 Ibid ss 16(4), 17(1).

6 For the meaning of 'literary work' see PARA 67 ante.

7 For the meaning of 'dramatic work' see PARA 73 ante.

8 For the meaning of 'musical work' see PARA 73 ante.

9 For the meaning of 'artistic work' see PARA 75 ante.

10 Copyright, Designs and Patents Act 1988 s 17(2). See also PARAS 315-317 post.

11 Being in possession of a medium, eg a floppy disk, on which a copyright work is recorded is not 'storing' the work as that involves the concept of activity, such as recording the work, eg by saving it, or lifting data into or out of storage: *Ocular Sciences Ltd v Aspect Vision Care Ltd, Geoffrey Harrison Galley v Ocular Vision Ltd* [1997] RPC 289 at 418.

- 12 For the meaning of 'electronic' see PARA 184 note 2 ante.
- 13 Copyright, Designs and Patents Act 1988 s 17(2).
- 14 Ibid s 17(3). See also PARA 317 post.
- 15 For the meaning of 'film' see PARA 86 ante.
- 16 For the meaning of 'broadcast' see PARA 89 ante.
- 17 For the meaning of 'photograph' see PARA 77 ante.
- 18 For the meaning of 'substantial part' see PARA 321 post.
- 19 Copyright, Designs and Patents Act 1988 s 17(4) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 2(1), 3, 5(5), Sch 1 Pt 1 paras 1, 3(a)). Cf *Spelling Goldberg Productions Inc v BPC Publishing Ltd* [1981] RPC 283 at 291, CA.
- 20 For the meaning of 'published edition' see PARA 92 ante.
- 21 For the meaning of 'facsimile copy' see PARA 184 note 2 ante.
- 22 Copyright, Designs and Patents Act 1988 s 17(5).
- 23 Ibid s 17(6).

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315. Copying.

A similarity or even identity, if it were conceivable, between two works due to coincidence does not constitute an infringement by the second of the first¹. A person may take a photograph of an object which has already been photographed², or make an independent engraving of a picture from which an engraving has already been made³, without committing an infringement of the first photograph or engraving. It is not an infringement to reproduce only the idea conveyed by or embodied in a copyright work without copying the form in which the idea is expressed⁴, but care must be exercised in this respect because the taking of a detailed pattern of ideas or incidents may well amount to infringement⁵. Similarities of style and technique are insufficient to give rise to a claim for infringement⁶.

It is, however, an infringement of copyright to produce a work similar to a copyright work, although the defendant has never seen the claimant's work, but has copied an intermediate copy, which he was entitled to copy⁷, or has worked from a written or verbal description⁸ for in that case the defendant has used, though indirectly, the material form in which the claimant has expressed himself. The fact that the defendant acted innocently is no defence, for copyright is a proprietary right, and, if it is invaded, the element of motive or intention on the part of the defendant is wholly irrelevant⁹.

1 *Corelli v Gray* (1913) 29 TLR 570; *Rees v Melville* (1914) MacG Cop Cas (1911-16) 168, CA; *Toole v Young* (1874) LR 9 QB 523; *Reichardt v Sapte* [1893] 2 QB 308; *Schlesinger v Bedford* (1890) 63 LT 762; *Robt v Palace Theatre* (1911) 28 TLR 69 (plays); *G Ricordi & Co (London) Ltd v Clayton and Waller Ltd* (1930) MacG Cop Cas (1928-35) 154 (music). See also *Ibcos Computers Ltd v Barclays Mercantile Highland Finance Ltd* [1994] FSR 275; *Stoddard International plc v William Lomas Carpets Ltd* [2001] All ER (D) 113 (Jan), (2001) Times, 14 February (carpet design); *Mattel Inc v Woolbro (Distributors) Ltd* [2003] EWHC 2412 (Ch), [2004] FSR 12.

2 *McCrum v Eisner* (1917) 87 LJ Ch 99 at 102 per Peterson J; *Lucas v Cooke* (1880) 13 ChD 872; *Creation Records Ltd v News Group Newspapers Ltd* [1997] EMLR 444.

3 *De Berenger v Wheble* (1819) 2 Stark 548; *Dicks v Brooks* (1880) 15 ChD 22 at 38, CA, per Bramwell LJ.

4 *Chilton v Progress Printing and Publishing Co* [1895] 2 Ch 29, CA (publication of opinions of various persons as to the probable results of a race); *Hanfstaengl v Baines & Co* [1895] AC 20, HL (sketches reproducing the idea but not the design of the original); *Bradbury, Agnew & Co v Day* (1916) 32 TLR 349 (living objects representing the idea of a picture); *McCrum v Eisner* (1917) 87 LJ Ch 99 (two comic postcards representing the same idea); *Bagge v Millar* (1920) MacG Cop Cas (1917-23) 179 (common ideas between two plays but no identity of language); *Gleeson and Gleeson Shirt Co Ltd v HR Denne Ltd* [1975] RPC 471 at 488, CA (idea for 'dog collar' shirt for clergymen); *Kleeneze Ltd v DRG (UK) Ltd* [1984] FSR 399 (idea for letter-box draught-excluder); *USP plc v London General Holdings Ltd* [2005] EWCA Civ 931, [2006] FSR 65, [2005] All ER (D) 320 (Jul) (extended warranty scheme); and see PARA 65 ante.

5 See *Austin v Columbia Graphophone Co Ltd* (1923) MacG Cop Cas (1917-23) 398 at 408; *Vane v Famous Players Film Co* (1928) MacG Cop Cas (1923-28) 374 (revsd on appeal sub nom *Sutton Vane v Famous Players Film Co Ltd* (1928) MacG Cop Cas (1928-35) 6, CA, but this proposition was not criticised); *LB (Plastics) Ltd v Swish Products Ltd* [1979] RPC 551 at 629, HL.

6 *Norowzian v Arks Ltd (No 2)* [1999] IP & T 223, CA. See also *Jones v Tower Hamlets London Borough Council* [2001] IP & T 341, [2001] RPC 407 (whether architect's total design concept capable of copyright protection).

7 Copyright, Designs and Patents Act 1988 s 16(3). This, in effect, makes explicit the existing law: see eg *Reade v Lacy* (1861) 1 John & H 524; *Schlesinger v Turner* (1890) 63 LT 764 (plays taken from novels based on original plays held in each case to be an infringement of the original play); *Murray v Bogue* (1853) 1 Drew 353 (if an English book were translated into German, and someone, without knowing of the English book,

retranslated it into English, that would be an infringement of the copyright in the original English book); *Ex p Beal* (1868) LR 3 QB 387 (photograph of an engraving held to be an infringement of the original painting from which the engraving was made); *Fairlie v Boosey* (1879) 4 App Cas 711, HL (infringement of copyright in an opera to perform in public an orchestral score produced by independent labour on an unprotected arrangement of the opera); *Lucas v Cooke* (1880) 13 ChD 872 at 880 per Fry J (photograph of living objects arranged to represent a picture an infringement of copyright in the picture); *Turner v Robinson* (1860) 10 I Ch R 510, CA.

8 *Solar Thomson Engineering Co Ltd v Barton* [1977] RPC 537 at 550, CA; *Plix Products Ltd v Frank M Winstone (Merchants) Ltd* [1986] FSR 608, NZ CA.

9 *Mansell v Valley Printing Co* [1908] 2 Ch 441 at 445, CA, per Cozens-Hardy MR; *Francis Day and Hunter Ltd v Bron* [1963] Ch 587, [1963] 2 All ER 16, CA; *Sony Music Entertainment (UK) Ltd v Easyinternetcafe Ltd* [2003] EWHC 62 (Ch), [2003] IP & T 1059, [2003] All ER (D) 249 (Jan). As to innocent infringement see also PARA 407 post.

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316. Reproduction.

It is an infringement¹ of the copyright² in a literary³, dramatic⁴, musical⁵ or artistic⁶ work to reproduce the work in any material form without the consent of the owner of the copyright⁷, and the making of even one infringing copy constitutes an infringement⁸.

In order to constitute 'reproduction' there must be sufficient objective similarity between the two works and also some causal connection between them; the existence of both these elements is a question of fact, the first being an objective issue and the second a subjective one⁹. Subconscious copying may constitute an infringement of copyright if familiarity with the work alleged to be copied is shown¹⁰.

It has always to be borne in mind that a claimant in a claim based on infringement of copyright will not succeed unless he establishes that the defendant has directly or indirectly made an unlawful use of the work in which the claimant is entitled to copyright¹¹. If, therefore, the imitation is an imitation of the claimant's idea only, but not of his literary, dramatic, artistic or musical work, or if the resemblance is due to coincidence or derivation from a common source, the claimant will not succeed. While, in a case in which use of the claimant's work is established, one test for determining whether a work is a copy or reproduction of another is whether it comes so near the original as to suggest that original to the mind of every person seeing it¹², the fact that a work complained of does suggest the original is not sufficient to enable a claimant to succeed in his claim, for the similarity may be due to the fact that both works are derived from a common source or that the similarity rests in the idea of the work and not in its form¹³. The proper approach is first to identify the part of the claimant's work alleged to have been reproduced and secondly to decide whether it constitutes a substantial part of the claimant's work¹⁴. The onus is on the claimant to show that the defendant, in making his work, has appropriated the labours of the claimant¹⁵. If, therefore, the defendant denies copying and is not cross-examined, infringement will not be inferred from mere similarity¹⁶. The question whether the claimant's labours have been so appropriated is one of fact, and such appropriation may be inferred from evidence that there are errors common to both works¹⁷, or from the cumulative effect of a number of similarities¹⁸.

1 The subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

2 For the meaning of 'copyright' see PARA 57 ante.

3 For the meaning of 'literary work' see PARA 67 ante.

4 For the meaning of 'dramatic work' see PARA 73 ante.

5 For the meaning of 'musical work' see PARA 73 ante.

6 For the meaning of 'artistic work' see PARA 75 ante.

7 See the Copyright, Designs and Patents Act 1988 ss 16(1)(a), (4), 17(2); and PARAS 311, 314 ante. See also *Brighton v Jones* [2004] EWHC 1157 (Ch), [2005] IP & T 223, [2004] EMLR 507 (in which consent was implied). As to who is the owner of the copyright in a work see PARA 118 et seq ante.

8 *Chappell & Co Ltd v Columbia Graphophone Co* [1914] 2 Ch 745, CA; *Novello v Sudlow* (1852) 12 CB 177. In certain old cases it was held that the protection extended not only to exact copies but to colourable

imitations: *McCrum v Eisner* (1917) 87 LJ Ch 99; *Nicol v Barranger* (1921) MacG Cop Cas (1917-23) 219 at 239, CA, per Warrington LJ; *Austin v Columbia Graphophone Co* (1923) 67 Sol Jo 790. In *McCrum v Eisner* supra at 101, reference was made to the definition in the Copyright Act 1911 s 35(1) (repealed), which defined 'infringing', when applied to a copy of a work in which copyright subsists, as meaning any copy, including any colourable imitation, made, or imported in contravention of the provisions of that Act. This definition did not appear in the Copyright Act 1956 (repealed), and it was held that, in considering infringements of literary copyright, colourable imitation was not a relevant consideration, but the question was whether there had been a reproduction of a substantial part of the work: see *Joy Music Ltd v Sunday Pictorial Newspapers (1920) Ltd* [1960] 2 QB 60 at 67, [1960] 1 All ER 703 at 706 per McNair J. The position is the same under the Copyright, Designs and Patents Act 1988: see s 16(3)(a); and PARA 312 ante.

9 *Francis Day and Hunter Ltd v Bron* [1963] Ch 587, [1963] 2 All ER 16, CA. See also *Christoffer v Poseidon Film Distributors Ltd* [1999] IP & T 118, [1999] All ER (D) 1063; *Nouveau Fabrics Ltd v Voyage Decoration Ltd* [2004] EWHC 895 (Ch), [2004] All ER (D) 288 (Apr).

10 *Francis Day and Hunter Ltd v Bron* [1963] Ch 587 at 613, [1963] 2 All ER 16 at 21, CA, per Wilmer LJ. See also *Purefoy Engineering Co Ltd v Sykes Boxall & Co Ltd* (1955) 72 RPC 89, CA; *Industrial Furnaces Ltd v Reaves* [1970] RPC 605; *Jones v Tower Hamlets London Borough Council* [2001] IP & T 341, [2001] RPC 407.

11 See the Copyright, Designs and Patents Act 1988 s 16(2), (3); and PARA 312 ante.

12 See the test suggested by Bayley J in *West v Francis* (1822) 5 B & Ald 737 at 743, approved by Lord Watson in *Hanfstaengl v Baines & Co* [1895] AC 20 at 27, HL, and modified by Kekewich J in *Hanfstaengl v WH Smith & Sons* [1905] 1 Ch 519 at 524, and by Peterson J in *McCrum v Eisner* (1917) 87 LJ Ch 99 at 102. In *King Features Syndicate Inc v O and M Kleeman Ltd* [1941] AC 417 at 424, [1941] 2 All ER 403 at 406, HL, Viscount Maugham intimated that the test, though not always applicable, gave some assistance.

13 *McCrum v Eisner* (1917) 87 LJ Ch 99; *Bauman v Fussell* (1953) [1978] RPC 485, CA. See also *Jones v Tower Hamlets London Borough Council* [2001] IP & T 341, [2001] RPC 407.

14 *Spectravest Inc v Aperknit Ltd* [1988] FSR 161.

15 *Corelli v Gray* (1913) 29 TLR 570 at 571 per Sargant J (affd (1913) 30 TLR 116, CA); *Lucas v Cooke* (1880) 13 ChD 872; *LB (Plastics) Ltd v Swish Products Ltd* [1979] RPC 551 at 570; *Stoddard International plc v William Lomas Carpets Ltd* [2001] All ER (D) 113 (Jan), (2001) Times, 14 February.

16 *Jarrold v Heywood* (1870) 18 WR 279 at 282. As to production of the manuscript see PARA 320 note 2 post.

17 *Murray v Bogue* (1853) 1 Drew 353; *Emmett v Meigs* (1921) 56 DLR 63; *Deeks v Wells* [1931] 4 DLR 513.

18 *Corelli v Gray* (1913) 30 TLR 116, CA.

UPDATE

316 Reproduction

NOTE 15--See *Grisbrook v MGN Ltd* [2009] EWHC 2520 (Ch), [2009] All ER (D) 254 (Oct).

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317. Reproduction in a different medium.

Reproduction includes the reproduction of a literary¹, dramatic² or musical³ work in the form of a sound recording⁴ or of a film⁵; and, in the case of an artistic work⁶, includes a version produced by converting a two-dimensional work into a three-dimensional form, or, if it is in three dimensions, by converting it into a two-dimensional form⁷. Where, however, the copyright work⁸ is a design document or model recording or embodying a design for anything other than an artistic work or a typeface⁹, it is not an infringement to make an article to the design or to copy an article made to the design¹⁰. In general¹¹, it is an infringement not only to reproduce a work in the same form, but also to reproduce it in another medium¹².

In the same way, it is an infringement of copyright to make any adaptation of a literary, dramatic or musical work¹³. In order that a play may constitute an infringement of copyright in a novel or in another play it is not necessary that the words of the dialogue should be the same, for the situations and incidents, or the mode in which the ideas are worked out and presented, may constitute a material portion of the claimant's work; and the court must have regard to the dramatic value and importance of what is taken, even though the portion is small and the actual language not copied¹⁴.

There is, however, no copyright in a mere plot¹⁵. In considering whether a film is an infringement of copyright in a novel, the proper inquiry is whether, keeping in view the idea and general effect created by a perusal of the novel, such a degree of similarity is attained as would lead one to say that the film is a reproduction of incidents described in the novel or of a substantial part of it¹⁶. The film must either use in its captions a substantial part of the words of the claimant's work, or use, in its pictures, a substantial part of the dramatic incidents represented, or colourable imitations of them¹⁷. The copyright in a non-dramatic work may be infringed by being converted into a dramatic work by performance in public¹⁸, but a song is not dramatised merely by being sung in costume¹⁹. A short story may be infringed by being dramatised as a ballet²⁰.

1 For the meaning of 'literary work' see PARA 67 ante.

2 For the meaning of 'dramatic work' see PARA 73 ante.

3 For the meaning of 'musical work' see PARA 73 ante.

4 See *Sawkins v Hyperion Records Ltd* [2005] EWCA Civ 565, [2005] 3 All ER 636, [2005] IP & T 923. For the meaning of 'sound recording' see PARA 84 ante.

5 See the Copyright, Designs and Patents Act 1988 s 17(2); and PARA 314 ante. For the meaning of 'film' see PARA 86 ante.

6 For the meaning of 'artistic work' see PARA 75 ante,

7 See the Copyright, Designs and Patents Act 1988 s 17(3); and PARA 314 ante. It is an open question whether a literary work such as a table of dimensions can be infringed by the making of a three-dimensional article: *Brigid Foley Ltd v Elliott* [1982] RPC 433; contra *Interlego AG v Tyco Industries Inc* [1989] AC 217, [1988] 3 All ER 949, PC; *Autospin (Oil Seals) Ltd v Beehive Spinning (a firm)* [1995] RPC 683 (for the proposition). See also *Anacon Corp Ltd v Environmental Research Technology Ltd* [1994] FSR 659 (artistic copyright in a circuit diagram infringed by converting it into a 'net list').

8 For the meanings of 'copyright' and 'copyright work' see PARA 57 ante.

9 For the meaning of 'typeface' see PARA 381 note 3 post.

10 See the Copyright, Designs and Patents Act 1988 s 51 (as amended); and PARA 376 post. As to restricting the acts which infringe an artistic work which has been exploited commercially by or with the licence of the owner of the copyright see PARA 378 post.

11 As to the position with regard to photographs see *Antiquesportfolio.com plc v Rodney Fitch & Co Ltd* [2001] IP & T 1375, [2001] FSR 345.

12 *Turner v Robinson* (1860) 10 I Ch R 510, CA; *Gambart v Ball* (1863) 14 CBNS 306; *Graves v Ashford* (1867) LR 2 CP 410, Ex Ch; *Lucas v Cooke* (1880) 13 ChD 872; *Hanfstaengl v Empire Palace* [1894] 2 Ch 1, CA; *Hanfstaengl v Baines & Co* [1895] AC 20, HL; *Bradbury, Agnew & Co v Day* (1916) 32 TLR 349; *King Features Syndicate Inc v O and M Kleeman Ltd* [1941] AC 417, [1941] 2 All ER 403, HL; *Bauman v Fussell* (1953) [1978] RPC 485, CA; *Harman Pictures NV v Osborne* [1967] 2 All ER 324, [1967] 1 WLR 723; *British Leyland Motor Corp Ltd v Armstrong Patents Co Ltd* [1986] AC 577, [1986] 1 All ER 850, HL; *Celador Productions Ltd v Melville, Boone v ITV Network, Baccini v Celador Productions Ltd* [2004] EWHC 2362 (Ch), [2004] All ER (D) 298 (Oct).

13 See the Copyright, Designs and Patents Act 1988 s 21(1); and PARA 327 post.

14 *Rees v Melville* (1914) MacG Cop Cas (1911-16) 168 at 174, CA, per Swinfen Eady LJ.

15 *Rees v Melville* (1914) MacG Cop Cas (1911-16) 168, CA; *Bagge v Millar* (1920) MacG Cop Cas (1917-23) 179; *Sutton Vane v Famous Players Film Co Ltd* (1928) MacG Cop Cas (1928-35) 6, CA; *Bolton v British International Pictures Ltd* (1936) MacG Cop Cas (1936-45) 20 (use of similar comic characters and scenic devices not an infringement).

16 *Glyn v Weston Feature Film Co* [1916] 1 Ch 261 at 269 per Younger J.

17 *Sutton Vane v Famous Players Film Co Ltd* (1928) MacG Cop Cas (1928-35) 6 at 8, CA, per Scrutton LJ; *Kelly v Cinema Houses Ltd* (1932) MacG Cop Cas (1928-35) 362 (talking films no infringement of novel); *Dagnall v British and Dominions Film Corp Ltd* (1933) MacG Cop Cas (1928-35) 391 (talking film no infringement of a stage play); *Poznanski v London Film Productions Ltd* (1937) MacG Cop Cas (1936-45) 107 (talking film no infringement of stage play); *Fernald v Jay Lewis Productions Ltd and Independent Film Distributors Ltd* (1953) [1975] FSR 499 (talking film infringement of a literary work). As to colourable imitations see PARA 316 note 8 ante.

18 See the Copyright, Designs and Patents Act 1988 s 21(1), (3)(a)(ii) (as amended); and PARA 327 post.

19 *Fuller v Blackpool Winter Gardens and Pavilion Co* [1895] 2 QB 429, CA. As to dramatisation see also *Russell v Smith* (1848) 12 QB 217. No doubt the performance in public is in itself an infringement of the performing right, but the question becomes material when the performer has a licence to perform but no licence to dramatise. As to performing right see PARA 604 et seq post.

20 *Holland v Vivian Van Damm Productions Ltd* (1936) MacG Cop Cas (1936-45) 69.

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318. Copying of computer programs.

Computer programs are protected as literary works¹. Loading a program into a computer memory, saving the program² or running it without authority may infringe copyright³. Making an arrangement or altered version of the program or converting it into or out of one computer language or code into a different computer language or code is also an infringement⁴. However, subject to certain conditions, a lawful user may decompile a program⁵, observe, study or test the functioning of a program in order to determine the ideas and principles which underlie any element of it⁶, or adapt it, for example, to correct errors⁷. When considering whether a substantial part⁸ of a computer program has been copied, the correct approach is to consider the similarities between the two programs individually and then to assess whether the entirety of what has been copied is a substantial part of that program⁹. In this respect regard should be had not only to literal similarities in the text of the code but also to the program structure¹⁰ and to specific design features¹¹.

1 For the meaning of 'literary work' see PARA 67 ante.

2 *Ocular Sciences Ltd v Aspect Vision Care Ltd*, *Geoffrey Harrison Galley v Ocular Sciences Ltd* [1997] RPC 289 at 418.

3 See the Copyright, Designs and Patents Act 1988 s 17(2), (6); and PARA 314 ante. For the meaning of 'copyright' see PARA 57 ante.

4 See *ibid* s 21(1), (3)(ab), (4) (as amended); and PARA 327 post.

5 See *ibid* s 50B (as added); and PARA 372 post.

6 See *ibid* s 50BA (as added); and PARA 373 post.

7 See *ibid* s 50C (as added and amended); and PARA 375 post.

8 The question of 'substantiality' has in the past given rise to difficulty where a defendant has argued that all that he has taken is the 'idea' or that the program routine is functional and the only way of carrying out the function required: see eg *Total Information Processing Systems Ltd v Daman Ltd* [1992] FSR 171; *John Richardson Computers Ltd v Flanders* [1993] FSR 497. The correct approach is now set out in *Ibcos Computers Ltd v Barclays Mercantile Highland Finance Ltd* [1994] FSR 275 at 301-302.

9 *John Richardson Computers Ltd v Flanders* [1993] FSR 497; *Ibcos Computers Ltd v Barclays Mercantile Highland Finance Ltd* [1994] FSR 275; *Cantor Fitzgerald International v Tradition (UK) Ltd* [2000] RPC 95, [1999] All ER (D) 389; *Nova Productions Ltd v Mazooma Games Ltd* [2006] EWHC 24 (Ch), [2006] All ER (D) 131 (Jan).

10 Ie the data division of programs.

11 *Ibcos Computers Ltd v Barclays Mercantile Highland Finance Ltd* [1994] FSR 275 (where it was held that the close correspondence in the distribution of functions between the individual programs in both the claimant's and the defendant's packages amounted to taking a substantial part of the claimant's program suite as a whole).

UPDATE

318 Copying of computer programs

NOTE 9--*Nova*, cited, affirmed: [2007] EWCA Civ 219, [2007] EMLR 427.

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319. Implied licence to use.

Where the copyright work¹ is of such a nature that the purchaser of copies sold may need to reproduce parts of it in order to obtain the benefit of the work, the sale authorises the reproduction of the work in the mode and to the extent intended by the seller only. Thus the sale of a copybook would authorise the writing out of phrases in handwriting, but not the reproduction of the book as a whole²; and the sale of a book of knitting patterns would authorise the knitting of garments from those patterns for family use but not for commercial sale³. Compilations such as dictionaries, directories, road books and legal, scientific or school textbooks are published with the intention that the information which they contain will be used by purchasers; but a person who proposes to publish a new book of the same character must go to the sources, and he must not use the labour of the author of an existing book which is entitled to copyright protection⁴. Similarly, a person who wishes to publish improvements on existing precedents is not entitled to reproduce such precedents without the consent of their author, although his only purpose in so doing is to indicate the nature of his improvements⁵.

A licence to use a copyright work may be implied from the dealings between the parties concerned⁶.

1 For the meanings of 'copyright' and 'copyright work' see PARA 57 ante.

2 *Ager v Peninsular and Oriental Steam Navigation Co* (1884) 26 ChD 637 at 641-642 per Kay J; *Ager v Collingridge* (1886) 2 TLR 291 (purchasers of code book not entitled to copy code words for a code of their own to be distributed among agents and correspondents); *H Blacklock & Co Ltd v C Arthur Pearson Ltd* [1915] 2 Ch 376 (infringement of copyright in a railway timetable to reproduce for sale the list of stations).

3 *Roberts v Candiware Ltd* [1980] FSR 352.

4 *Jarrold v Houlston* (1857) 3 K & J 708 (book of questions and answers on scientific matters); *Kelly v Morris* (1866) LR 1 Eq 697 (street directory); *Educational Company of Ireland v Fallon Bros Ltd and Getz* [1919] 1 IR 62 (school textbook); and see *Matthewson v Stockdale* (1806) 12 Ves 270 (all human events are equally open to all who wish to add to or improve the material already collected by others, making an original work). As to copyright in compilations generally see PARA 68 ante.

5 *Alexander v Mackenzie* (1847) 9 D 748, Ct of Sess.

6 See *Brighton v Jones* [2004] EWHC 1157 (Ch), [2005] IP & T 223, [2004] EMLR 507.

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320. Lawful user.

Copyright will not be infringed merely because a copyright work¹ is used to obtain source references. For example, the compiler of a directory may refer to an earlier directory for the purpose of ascertaining where to make inquiries; but he must make such inquiries himself, and the work he produces must represent the result of his inquiries; it is not sufficient that he merely checks to some extent the accuracy of the claimant's work and then reproduces the claimant's work so checked². Further, the copying of names and addresses onto a word processor for the purpose of sending out mail shots to request information is an infringement³. Similarly, the writer of a textbook, having been put on to the track of a common source by an earlier textbook, is entitled to make use of every passage from the common source which the earlier textbook writer has used⁴; but the writer of a textbook which consists largely of notes and apt quotations appended to passages in a well-known work is not entitled to make use of the labour of an earlier writer who has selected such apt quotations, even though the writer of the subsequent book himself looks up and checks the references⁵.

It is a legitimate use of an existing compilation to refer to it after the subsequent work is completed to see whether any subject matter has been omitted⁶.

1 For the meanings of 'copyright' and 'copyright work' see PARA 57 ante.

2 *Morris v Wright* (1870) 5 Ch App 279, CA; *Kelly v Morris* (1866) LR 1 Eq 697; *Spiers v Brown* (1858) 31 LTOS 16; *Morris v Ashbee* (1868) LR 7 Eq 34; *Cartwright v Wharton* (1912) 25 OLR 357. If the compiler defends on the ground that his manuscript is a fair compilation and not a copy, it may be of the utmost importance that his original manuscript should be produced: see *Hotten v Arthur* (1863) 1 Hem & M 603. It seems that he should also acknowledge the use he has made of earlier works: see *Spiers v Brown* supra. As to copyright in compilations generally see PARA 68 ante.

3 *Waterlow Directories Ltd v Reed Information Services Ltd* [1992] FSR 409. The question whether the hand copying of names and addresses onto envelopes would likewise be an infringement was left open.

4 *Pike v Nicholas* (1869) 5 Ch App 251 at 263 per Lord Hatherley LC; *Jarrold v Houlston* (1857) 3 K & J 708; *Hogg v Scott* (1874) LR 18 Eq 444 at 457.

5 *Moffatt and Paige Ltd v Gill & Sons Ltd and Marshall* (1902) 86 LT 465, CA (competing school editions of 'As You Like It'); *Blackie & Sons Ltd v Lothian Book Publishing Co Pty Ltd* (1921) 29 CLR 396, Aust HC.

6 *Jarrold v Houlston* (1857) 3 K & J 708; *Educational Company of Ireland Ltd v Fallon Bros Ltd and Getz* [1919] 1 IR 62.

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321. Infringing act in relation to substantial part of work.

The doing of an infringing act in relation to a work which is protected by copyright¹ is taken to include the doing of that act in relation to a substantial part of the work²; and what is substantial is a matter of fact³. In judging this question the quantity taken is not the only consideration⁴; the value must also be considered, for, if a vital part of a book has been taken for use in another publication, although such part constitutes only a small proportion of the entire text, the sale of the author's original work may be prejudiced⁵; and the court will not look merely at isolated passages, but will consider the two works as a whole to see whether there has been any such prejudicial infringement⁶.

For the same reason the use of even a small portion of an author's work will be restrained, if it is used in a work which competes with the author's work⁷, or with a work which the author may publish in the future⁸; or if the user complained of tends to vulgarise the author's work⁹. If the defendant sets up a claim of right, the circumstance that he has copied only a small portion of the author's book may become immaterial¹⁰. Where the work said to be infringed is a compilation, it must be shown that a substantial part of the labour of compilation has been used in the work complained of¹¹. Where the work is an artistic work¹², those features which are 'visually significant' are likely to be regarded as a substantial part of the work¹³, but the scope of the copyright is the same whether the work is imaginative or commonplace¹⁴.

Copyright is a proprietary right, and its infringement is actionable without proof of damage; if, therefore, a substantial part of an author's work is taken, it is not material to consider whether the two publications are, or are not, likely to enter into competition with one another¹⁵.

1 For the meanings of 'copyright' and 'copyright work' see PARA 57 ante.

2 See the Copyright, Designs and Patents Act 16(3)(a); and PARA 312 ante. See also *Pike v Nicholas* (1869) 5 Ch App 251 (the taking of one or two passages not a substantial part); *Boosey v Whight* [1900] 1 Ch 122, CA (the taking of the musical directions from a musical work for application to a piano-player roll not a substantial part of the work); *Whittingham v Wooler* (1817) 2 Swan 428 (taking of six pages of a farce and reproducing them in a critical work not an infringement); *Murray v Elliston* (1822) 5 B & Ald 657 (abridgement of play no infringement; but see note 15 infra); *Cooksley v Johnson & Sons* (1905) 25 NZLR 834, NZ CA; *Chappell & Co Ltd v DC Thompson & Co Ltd* (1934) MacG Cop Cas (1928-35) 467 (use of four lines of a song as chapter headings not an infringement); *Frankenberg v Gibbens* (1952) 83 The Author 36 (the taking of passages amounting to some 600 words in all from a book of some 200 pages held a substantial reproduction); *Fernald v Jay Lewis Productions Ltd and Independent Film Distributors Ltd* (1953) [1975] FSR 499 (the taking of an episode occupying four out of 126 pages in a book for use in a film amounted to a substantial part); *Ludlow Music Inc v Williams* [2001] FSR 271, [2001] EMLR 155, [2000] IP & T 1440 (song lyrics); *Newspaper Licensing Agency Ltd v Marks & Spencer plc* [2001] UKHL 38, [2003] 1 AC 551, [2001] 3 All ER 977 (typographical arrangements of published editions).

3 *Designers Guild Ltd v Russell Williams (Textiles) Ltd* [2001] 1 All ER 700, [2001] FSR 113, [2001] IP & T 277, HL; *King Features Syndicate Inc v O and M Kleeman Ltd* [1941] AC 417 at 424, 435, [1941] 2 All ER 403 at 406, 413, HL; *Chatterton v Cave* (1878) 3 App Cas 483 at 498, HL, per Lord O' Hagan (corrections to race card not substantial); *Planché v Braham* (1837) 4 Bing NC 17; *Moore v Clarke* (1842) 9 M & W 692; *Beere v Ellis* (1889) 5 TLR 330.

4 In cases where the question of substantiality is concerned with the quantity or extent of the copying the question is whether the alleged infringing work incorporated a substantial part of the skill and labour expended by the author of the original work: *Designers Guild Ltd v Russell Williams (Textiles) Ltd* [2001] 1 All ER 700, [2001] FSR 113, [2001] IP & T 277, HL. See also *IPC Media Ltd v Highbury-SPL Publishing Ltd* [2004] EWHC 2985 (Ch), [2004] All ER (D) 342 (Dec); *Coffey v Warner/Chappell Music Ltd* [2005] EWHC 449 (Ch), [2005] All ER (D)

329 (Mar); *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch), [2006] All ER (D) 276 (Mar) (extracts quoted verbatim from a journal adding up to just over 15% of the whole; held to be substantial).

5 *Hawkes & Son (London) Ltd v Paramount Film Service Ltd* [1934] Ch 593, CA (where the reproduction in a newsreel of some 28 bars, containing the principal air, of a well-known march was held an infringement); *Bramwell v Halcomb* (1836) 3 My & Cr 737 at 738 per Lord Cottenham CJ; *Saunders v Smith* (1838) 3 My & Cr 711; *Chatterton v Cave* (1878) 3 App Cas 483, HL; *Scott v Stanford* (1867) LR 3 Eq 718; *Neale v Harmer* (1897) 13 TLR 209; *Brooks v Religious Tract Society* (1897) 45 WR 476; *Kelly v Hooper* (1841) 1 Y & C Ch Cas 197; *Cooper v Stephens* [1895] 1 Ch 567 at 572; *Blackie & Sons v Lothian Book Publishing Co Pty Ltd* (1921) 29 CLR 396, Aust HC; *Stevens v Wildy* (1850) 19 LJ Ch 190.

6 *Sweet v Cater* (1841) 5 Jur 68 at 70 per Shadwell V-C.

7 *Cooper v Stephens* [1895] 1 Ch 567; *Bohn v Bogue* (1846) 7 LTOS 277; *Cambridge University Press v University Tutorial Press* (1928) 45 RPC 335; *Kelly v Hooper* (1839) 4 Jur 21. If a vital part is taken, it does not matter that it is used for a totally different purpose: *D'Almaine v Boosey* (1835) 1 Y & C Ex 288; *Neale v Harmer* (1897) 13 TLR 209. A parody which is in itself original having its origin in the work parodied was held not to infringe the copyright in the work: *Joy Music Ltd v Sunday Pictorial Newspaper (1920) Ltd* [1960] 2 QB 60, [1960] 1 All ER 703.

8 *Bradbury v Hotten* (1872) LR 8 Exch 1; *Weatherby & Sons v International Horse Agency and Exchange Ltd* [1910] 2 Ch 297.

9 *Hanfstaengl v WH Smith & Sons* [1905] 1 Ch 519.

10 *Cate v Devon and Exeter Constitutional Newspaper Co* (1889) 40 ChD 500 at 507 per North J (applied in *Football League Ltd v Littlewoods Pools Ltd* [1959] Ch 637, [1959] 2 All ER 546); *Trade Auxiliary Co v Middlesborough and District Tradesmen's Protection Association* (1889) 40 ChD 425, CA. The cases of *Cate v Devon and Exeter Constitutional Newspaper Co* supra and *Trade Auxiliary Co v Middlesborough and District Tradesmen's Protection Association* supra were decided before the passing of the Copyright Act 1911, which confined the author's sole right to the reproduction of the work 'or any substantial part thereof' (cf the Copyright, Designs and Patents Act 1988 s 16(3)(a); and the text to note 2 supra) and so required a substantial part to be taken to constitute an infringement. Although no substantial part had in fact been taken, the claim of right may have sufficiently founded an inference of intention to take a substantial part as occasion arises. However, the proposition that small but regular helpings may infringe is one which may require re-examination by a higher court: see *Electronic Techniques (Anglia) Ltd v Critchley Components Ltd* [1997] FSR 401 at 408-410.

11 *Leslie v Young & Sons* [1894] AC 335, HL; *Barfield v Nicholson* (1824) 2 Sim & St 1; *Black v Murray & Son* (1870) 9 M 341; *Graves v Pocket Publications Ltd* (1938) 159 LT 471; *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 All ER 465, [1964] 1 WLR 273, HL; *Warwick Film Productions Ltd v Eisinger* [1969] 1 Ch 508, [1967] 3 All ER 367; *Industrial Furnaces Ltd v Reaves* [1970] RPC 605.

12 For the meaning of 'artistic work' see PARA 75 ante.

13 *Interlego AG v Tyco Industries Inc* [1989] AC 217 at 266, [1988] 3 All ER 949 at 974, PC. 'Visually significant' is not synonymous with 'aesthetically pleasing' since for many artistic works artistic 'quality' is not a requirement (see PARA 75 note 5 ante); and see eg *Billhöfer Maschinenfabrik GmbH v TH Dixon & Co Ltd* [1990] FSR 105 at 120, 122 (where what was significant on an engineering drawing was assessed by reference to an engineer and not the lay person). See also *Designers Guild Ltd v Russell Williams (Textiles) Ltd* [2001] 1 All ER 700, [2001] FSR 113, [2001] IP & T 277, HL.

14 *Catnic Components Ltd v Hill & Smith Ltd* [1982] RPC 183 at 223, HL, cited with approval in *Interlego AG v Tyco Industries Inc* [1989] AC 217, [1988] 3 All ER 949, PC.

15 *Weatherby & Sons v International Horse Agency and Exchange Ltd* [1910] 2 Ch 297 at 304-305 per Parker J; *Performing Right Society Ltd v Hawthorns Hotel (Bournemouth) Ltd* [1933] Ch 855. The question of competition may properly be considered in judging whether a substantial part has been taken: see *Cooper v Stephens* [1895] 1 Ch 567 at 572; *Bradbury v Hotten* (1872) LR 8 Exch 1 at 6; and note 7 supra.

It is submitted that there is no justification for the view that the user of a copyright work is justifiable if independent labour is expended on the part used so as to reproduce a new work. In certain old cases (see eg *Dodsley v Kinnersley* (1761) Amb 403; *Gyles v Wilcox* (1741) 2 Atk 141; *Anon* (1774) Lofft 775; *Bell v Walker and Debrett* (1785) 1 Bro CC 451; *D'Almaine v Boosey* (1835) 1 Y & C Ex 288) the view was expressed that an injunction should be refused to restrain an abridgement of a copyright work made bona fide where labour and judgment had been employed in reducing the original work and eliminating unnecessary material; and in *Glyn v Weston Feature Film Co* [1916] 1 Ch 261 at 268, Younger J suggested that a burlesque would not be an infringement of the copyright in a play on which it was based if the defendant had bestowed such mental labour on what he had taken and had subjected it to such revision as to produce an original result (and see *Cary v*

Kearsley (1802) 4 Esp 168). The right to abridge was, however, doubted in *Dickens v Lee* (1844) 8 Jur 183 and *Tinsley v Lacy* (1863) 1 Hem & M 747; and Younger J's view expressed in *Glyn v Weston Feature Film Co* supra was not the basis of his judgment. It would appear that at any rate since the commencement of the Copyright Act 1911, whereby reproduction in any material form was made an infringement of copyright (see now the Copyright, Designs and Patents Act 1988 s 17(2); and PARA 314 ante), there can be no justification for a user of copyright material based on a supposed right to abridge or burlesque. A burlesque may, however, be no infringement because it does not reproduce any of the incidents of the play burlesqued, but only the plot in which there may be no copyright: see PARA 317 ante.

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B. ISSUING COPIES TO THE PUBLIC

322. Infringement by issue of copies to the public.

The issue to the public of copies of the work¹ is² an act restricted by the copyright³ in every description of copyright work⁴.

References in the Copyright, Designs and Patents Act 1988⁵ to the issue to the public of copies of a work are references to:

- 244 (1) the act of putting into circulation in the EEA⁶ copies not previously put into circulation in the EEA by or with the consent of the copyright owner⁷; or
- 245 (2) the act of putting into circulation outside the EEA copies not previously put into circulation in the EEA or elsewhere⁸,

but such references do not include any subsequent distribution, sale, hiring or loan⁹ of copies previously put into circulation¹⁰ or any subsequent importation of such copies into the United Kingdom¹¹ or another EEA state¹², except so far as head (1) above applies to putting into circulation in the EEA copies previously put into circulation outside the EEA¹³.

Liability for copyright infringement under these provisions is strict and it is no defence for a person to assert that he did not know he was infringing a copyright¹⁴.

1 References to the issue of copies of a work include the issue of the original: Copyright, Designs and Patents Act 1988 s 18(4) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 9(1), (3)). For the meaning of 'copies' see PARA 314 ante.

2 Ie subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

3 For the meaning of 'acts restricted by the copyright' see PARA 311 ante.

4 Copyright, Designs and Patents Act 1988 ss 16(4), 18(1). For the meaning of 'copyright work' see PARA 57 ante. Thus it is an infringement to issue authorised copies to the public if the act of issuing has not itself been licensed: *Nelson v Rye* [1996] 2 All ER 186, [1996] FSR 313.

The right to restrict the issue of copies to the public is often referred to as 'the distribution right'. It was first introduced by the Copyright, Designs and Patents Act 1988 s 18 (as originally enacted) and applied to works made before 1 August 1989 in respect of acts done on or after that date (see s 170, Sch 1 para 14(1)); but, in so far as it restricted the rental to the public of copies of sound recordings, films or computer programs, it did not apply to any such copy acquired by any person before that date for the purpose of renting it to the public (see Sch 1 para 14(2)). In its original form it did not apply to the parallel importation of products legitimately marketed in other countries. The scope of the right was extended on 1 December 1996 by the Copyright and Related Rights Regulations 1996, SI 1996/2967 (see regs 1(2), 6) so that the parallel importation into the EEA of copies made outside the EEA is now an infringement; but the extended right does not apply to any copy of the work acquired by a person before 1 December 1996 for the purpose of renting or lending it to the public (see regs 1(2), 34(1)). The full right is conferred on works made both before, on and after 1 December 1996 (see regs 1(2), 26(1)); but no act done before 1 December 1996 is an infringement of any new rights so conferred (see regs 1(2), 26(2)).

5 Ie in the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended)

6 'The EEA' means the European Economic Area: *ibid* s 172A(1) (s 172A added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 11(1); and the Copyright, Designs and Patents Act 1988 s 172A(1) substituted by the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 2(2), Sch 2 para 8(1), (2)).

7 Copyright, Designs and Patents Act 1988 s 18(2)(a) (s 18(2) substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 9(2)). As to who is the owner of the copyright in a work see *PARA* 118 *et seq* ante.

8 Copyright, Designs and Patents Act 1988 s 18(2)(b) (as substituted: see note 7 *supra*).

9 See, however, *ibid* s 18A (as added); and *PARA* 323 *post*.

10 *Ibid* s 18(3)(a) (s 18(3) added by the Copyright (Computer Programs) Regulations 1992, SI 1992/3233, reg 4(2); and substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 9(2)).

11 For the meaning of 'United Kingdom' see *PARA* 3 note 1 *ante*.

12 Copyright, Designs and Patents Act 1988 s 18(3)(b) (as added and substituted: see note 10 *supra*). For the meaning of 'EEA state' see *PARA* 90 note 5 *ante*.

13 *Ibid* s 18(3) (as added and substituted: see note 10 *supra*).

14 *Sony Music Entertainment (UK) Ltd v Easyinternetcafe Ltd* [2003] EWHC 62 (Ch), [2003] IP & T 1059, [2003] All ER (D) 249 (Jan). As to innocent infringement see also *PARA* 407 *post*.

UPDATE

322 Infringement by issue of copies to the public

NOTE 7--See *Independiente Ltd v Music Trading On-line (HK) Ltd* [2007] EWHC 533 (Ch), [2007] IP & T 728 (circulation occurred on delivery to customer; delivery occurred on delivery to customer by postal services and not on delivery to carrier).

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C. RENTING OR LENDING OF WORKS TO THE PUBLIC

323. Infringement by rental or lending of work to the public.

The rental or lending of copies¹ of the work² to the public is³ an act restricted by copyright⁴ in a literary⁵, dramatic⁶ or musical work⁷, an artistic work⁸ other than a work of architecture⁹ in the form of a building¹⁰ or a model for a building¹¹ or a work of applied art¹², or a film¹³ or a sound recording¹⁴.

'Rental' means making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage¹⁵; and 'lending' means making a copy of the work available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public¹⁶. The expressions 'rental' and 'lending' do not, however, include making available for the purpose of public performance¹⁷, playing or showing in public or communication to the public¹⁸, making available for the purpose of exhibition in public¹⁹ or making available for on-the-spot reference use²⁰. Nor does the expression 'lending' include making available between establishments which are accessible to the public²¹.

Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for these purposes²².

1 For the meaning of 'copies' see PARA 314 ante.

2 For these purposes, references to the rental or lending of copies of a work include the rental or lending of the original: Copyright, Designs and Patents Act 1988 s 18A(6) (s 18A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 10(2)). For the meaning of 'copyright work' see PARA 57 ante.

3 Ie subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

4 For the meaning of 'acts restricted by the copyright' see PARA 311 ante.

5 For the meaning of 'literary work' see PARA 67 ante.

6 For the meaning of 'dramatic work' see PARA 73 ante.

7 Copyright, Designs and Patents Act 1988 s 18A(1)(a) (as added: see note 2 supra). For the meaning of 'musical work' see PARA 73 ante.

8 For the meaning of 'artistic work' see PARA 75 ante.

9 For the meaning of 'work of architecture' see PARA 79 ante.

10 For the meaning of 'building' see PARA 79 ante.

11 Copyright, Designs and Patents Act 1988 s 18A(1)(b)(i) (as added: see note 2 supra).

12 Ibid s 18A(1)(b)(ii) (as added: see note 2 supra). The term 'applied art' is not defined in the Copyright, Designs and Patents Act 1988.

13 For the meaning of 'film' see PARA 86 ante.

14 Copyright, Designs and Patents Act 1988 ss 16(4), 18A(1)(c) (as added: see note 2 supra). For the meaning of 'sound recording' see PARA 84 ante. The establishment of an exclusive rental right is not contrary to European law: Case C-200/96 *Metronome Musik GmbH v Music Point Hokamp GmbH* [1998] ECR I-1953, [1998] 3 CMLR 919, ECJ. It is not unlawful for the holder of an exclusive rental right to prohibit copies of a film from being offered for rental in one member state of the European Union even where the offering of those copies for rental has been authorised in the territory of another member state: Case C-61/97 *Foreningen AF Danske Viseogramdistributører v Laserdisken, acting for Egmont Film A/S* [1998] ECR I-5171, sub nom *Egmont Film A/S v Laserdisken (supported by Sammenslutningen af Danske Filminstruktører)* [1999] All ER (EC) 366, ECJ.

The right to restrict the rental or lending of copies is often referred to as 'rental right' (see PARA 170 note 4 ante). It was introduced on 1 December 1996 by the Copyright and Related Rights Regulations 1996, SI 1996/2967 (as amended) (see regs 1(2), 10) and applies to copyright works whenever made (see reg 26(1)); but it does not apply to any copy of the work acquired by a person before 1 December 1996 for the purpose of renting or lending it to the public (see reg 34(1)). No act done before 1 December 1996 is, however, an infringement of the new rights so conferred: see reg 26(2). As to the right of an author to equitable remuneration where the rental right is transferred see PARA 171 ante.

15 Copyright, Designs and Patents Act 1988 s 18A(2)(a) (as added: see note 2 supra).

16 Ibid s 18A(2)(b) (as added: see note 2 supra).

17 For the meaning of 'performance' see PARA 324 post.

18 Copyright, Designs and Patents Act 1988 s 18A(3)(a) (as added (see note 2 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 6(2)(a)). For the meaning of 'communication to the public' see PARA 326 post.

19 Copyright, Designs and Patents Act 1988 s 18A(3)(b) (as added: see note 2 supra).

20 Ibid s 18A(3)(c) (as added: see note 2 supra).

21 Ibid s 18A(4) (as added: see note 2 supra).

22 Ibid s 18A(5) (as added: see note 2 supra).

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D. PERFORMING, SHOWING OR PLAYING A WORK IN PUBLIC

324. Infringement by performance, showing or playing of work in public.

The performance of the work in public¹ is² an act restricted by the copyright³ in a literary⁴, dramatic⁵ or musical⁶ work⁷.

'Performance', in relation to a work:

- 246 (1) includes delivery in the case of lectures, addresses, speeches and sermons⁸; and
- 247 (2) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording⁹, film¹⁰ or broadcast¹¹ of the work¹².

The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film¹³ or broadcast¹⁴.

Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds conveyed by electronic¹⁵ means, the person by whom the visual images or sounds are sent and, in the case of a performance, the performers are not to be regarded as responsible for the infringement¹⁶.

In certain circumstances persons who permit the use of premises for an infringing performance¹⁷ or who provide apparatus or copies of a sound recording or film for the purposes of an infringing performance¹⁸ are also liable for infringement¹⁹.

1 As to the meaning of 'in public' see PARA 325 post.

2 The subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

3 For the meaning of 'acts restricted by the copyright' see PARA 311 ante.

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'dramatic work' see PARA 73 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 Copyright, Designs and Patents Act 1988 ss 16(4), 19(1).

8 Ibid s 19(2)(a).

9 For the meaning of 'sound recording' see PARA 84 ante. As to a specific defence in relation to causing a sound recording to be heard in public see PARA 395 post.

10 For the meaning of 'film' see PARA 86 ante.

11 For the meaning of 'broadcast' see PARA 89 ante.

12 Copyright, Designs and Patents Act 1988 s 19(2)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(1)(b)).

13 As to showing a film see PARA 87 note 4 ante. In *Karno v Pathé Frères London Ltd* (1908) 99 LT 114 (affd (1909) 100 LT 260, CA), it was held that the exhibition of a silent film amounted to a performance of the dramatic work it represented.

14 Copyright, Designs and Patents Act 1988 s 19(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 3(1)(c)).

15 For the meaning of 'electronic' see PARA 184 note 2 ante.

16 Copyright, Designs and Patents Act 1988 s 19(4).

17 See *ibid* s 25; and PARA 332 post.

18 See *ibid* s 26; and PARA 333 post.

19 Both these types of infringement require 'knowledge or reason to believe' and are classed as secondary infringements: see PARAS 332-333 post.

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325. Meaning of 'in public'.

The question whether a work is performed, or a sound recording, film or broadcast is shown or played, in public¹ is solely one of fact, but certain considerations and tests have been applied; among them the question whether there has been any admission, with or without payment, of any portion of the public to the injury of the author, that is to say, of the class of persons who would be likely to go to a performance if there were a performance at a public theatre for profit, or whether the performance was private and domestic, a matter of family and household concern only².

Any performance which is not domestic or quasi-domestic will be regarded as being made in public notwithstanding that only a few members of the public are present or that no charge for admission is made³. A performance may be in public notwithstanding that it is given in a place not habitually used for dramatic entertainments⁴. Performances by teachers or pupils in schools are, in general, not performances in public⁵.

1 See PARA 324 ante. As to a special defence in relation to causing a sound recording to be heard in public see PARA 395 post.

2 See the cases cited in note 3 infra.

3 *Harms (Inc) Ltd and Chappell & Co Ltd v Martans Club Ltd* [1927] 1 Ch 526 at 532-533, CA, per Lord Hanworth MR (performance of dance music on premises of a proprietary club where members and guests were admitted held to be a performance in public); *Performing Right Society Ltd v Hawthorns Hotel (Bournemouth) Ltd* [1933] Ch 855 (performance at a residential hotel open to non-residents who dined held to be in public); *Performing Right Society Ltd v Camelo* [1936] 3 All ER 557 (performance in a private room clearly audible to persons dining in a restaurant held to be in public); *Jennings v Stephens* [1936] Ch 469, [1936] 1 All ER 409, CA (performance for members of a village institute by members of another institute, no non-members being admitted, held to be in public); *Ernest Turner Electrical Instruments Ltd v Performing Right Society Ltd* [1943] Ch 167, [1943] 1 All ER 413, CA (performance at a factory to workers while working held to be in public); *Performing Right Society Ltd v Rangers Football Club Supporters Club* 1974 SLT 151, Ct of Sess (performance of musical works at football supporters' club held to be in public); *Performing Right Society Ltd v Harlequin Record Shops Ltd* [1979] 2 All ER 828, [1979] 1 WLR 851 (playing records in a record shop to encourage purchasers to buy held to be an infringement); *Australian Performing Right Association Ltd v Tolbush Pty Ltd* (1985) 7 IPR 160, Qld SC (music on car radios for sale in car accessories shop held to be an infringement); *South African Music Rights Organisation Ltd v Trust Butchers (Pty) Ltd* 1978 (1) SA 1052, SA SC (music in room behind shop played loudly enough to be heard by customers held to be an infringement); *Australian Performing Right Association Ltd v Commonwealth Bank of Australia* (1992) 25 IPR 157 (instructional video played to 11 bank employees held to be an infringement); *Rank Film Production Ltd v Dodds (t/a Town & Country Motel)* (1983) 2 IPR 113, NSW SC (provision of free 'in-house movies' by means of a video recorder connected to television sets in a motel room held to be performance of the films in public). See, however, the decisions that the place in question was not a place of dramatic entertainment within the Dramatic Copyright Act 1833 (repealed) in *Duck v Bates* (1884) 13 QBD 843, CA (performance of dramatic work for charity at a hospital to audience of members of the staff and friends not an infringement); *Glenville v Selig Polyscope Co* (1911) 27 TLR 554 (performance of a film at a trade show not an infringement). See also *Phonographic Performance Ltd v South Tyneside Metropolitan Borough Council* [2001] LGR 176, [2001] RPC 594.

4 See the cases cited in note 3 supra.

5 See the Copyright, Designs and Patents Act 1988 s 34 (as amended); and PARA 349 post.

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E. COMMUNICATING TO THE PUBLIC BY ELECTRONIC TRANSMISSION

326. Infringement by communication to the public.

The communication to the public of the work is¹ an act restricted by the copyright² in:

- 248 (1) a literary³, dramatic⁴, musical⁵ or artistic work⁶;
- 249 (2) a sound recording⁷ or film⁸; or
- 250 (3) a broadcast⁹.

References¹⁰ to communication to the public are references to communication to the public by electronic¹¹ transmission, and in relation to a work include: (a) the broadcasting¹² of the work¹³; (b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them¹⁴.

In respect of these provisions it is not necessary that a person knows or has reason to believe that what he is doing is an infringement of copyright in the work in question; innocence or ignorance is no defence¹⁵.

1 The subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

2 For the meaning of 'acts restricted by the copyright' see PARA 311 ante.

3 For the meaning of 'literary work' see PARA 67 ante.

4 For the meaning of 'dramatic work' see PARA 73 ante.

5 For the meaning of 'musical work' see PARA 73 ante.

6 Copyright, Designs and Patents Act 1988 ss 16(4), 20(1)(a) (s 20 substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 6(1)). For the meaning of 'artistic work' see PARA 75 ante. Connecting a computer running P2P software to the internet, with music files, containing copies of sound recording copyright works, being placed in a shared file directory constitutes a restricted act within the Copyright, Designs and Patents Act 1988 s 20 (as substituted): *Polydor Ltd v Bowles* [2005] EWHC 3191 (Ch), sub nom *Polydor Ltd v Woodhouse* [2005] All ER (D) 375 (Nov).

7 For the meaning of 'sound recording' see PARA 84 ante.

8 Copyright, Designs and Patents Act 1988 s 20(1)(b) (as substituted: see note 6 supra). For the meaning of 'film' see PARA 86 ante.

9 Ibid s 20(1)(c) (as substituted: see note 6 supra). For the meaning of 'broadcast' see PARA 89 ante.

10 The Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

11 For the meaning of 'electronic' see PARA 184 note 2 ante.

12 For the meaning of 'broadcasting' see PARA 89 ante.

13 Copyright, Designs and Patents Act 1988 s 20(2)(a) (as substituted: see note 6 supra).

14 Ibid s 20(2)(b) (as substituted: see note 6 supra).

15 *Polydor Ltd v Bowles* [2005] EWHC 3191 (Ch), sub nom *Polydor Ltd v Woodhouse* [2005] All ER (D) 375 (Nov).

UPDATE

326 Infringement by communication to the public

NOTE 6--See also Case C-275/06 *Productores de Música de España (Promusicae) v Telefonica de España SAU* [2008] All ER (EC) 809, ECJ (obligation of state to require telecommunications companies to disclose traffic data in respect of civil proceedings).

NOTE 14--Communication to the public does not encompass the mere installation of television sets in hotel rooms, but does include the transmission of a signal received by the television sets whether watched publicly or in private: Case C-306/05 *Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SL* [2007] Bus LR 521, ECJ.

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F. MAKING AN ADAPTATION

327. Infringement by making adaptation or act done in relation to adaptation.

The making of an adaptation of the work is¹ an act restricted by the copyright² in a literary³, dramatic⁴ or musical⁵ work⁶. For this purpose, an adaptation is made when it is recorded, in writing⁷ or otherwise⁸.

The doing of any act of infringement⁹ in relation to an adaptation of the work is also an act restricted by the copyright in a literary, dramatic or musical work¹⁰. For this purpose, it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done¹¹.

'Adaptation'¹² means:

251 (1) in relation to a literary work, other than a computer program or a database¹³, or in relation to a dramatic work¹⁴:

7

9. (a) a translation of the work¹⁵;

10. (b) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work¹⁶;

11. (c) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical¹⁷;

8

252 (2) in relation to a computer program, an arrangement or altered version of the program or a translation of it¹⁸;

253 (3) in relation to a database, an arrangement or altered version of the database or a translation of it¹⁹;

254 (4) in relation to a musical work, an arrangement or transcription of the work²⁰.

No inference may be drawn from the above provisions as to what does or does not amount to copying a work²¹.

1. Subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

2. For the meaning of 'acts restricted by the copyright' see PARA 311 ante.

3. For the meaning of 'literary work' see PARA 67 ante.

4. For the meaning of 'dramatic work' see PARA 73 ante.

5. For the meaning of 'musical work' see PARA 73 ante.

6. Copyright, Designs and Patents Act 1988 ss 16(4), 21(1).

7 For the meaning of 'writing' see PARA 66 note 5 ante.

8 Copyright, Designs and Patents Act 1988 s 21(1).

9 ie any of the acts specified in *ibid* s 17 (as amended) (see PARA 314 ante), s 18 (as amended) (see PARA 322 ante), s 18A (as added and amended) (see PARA 323 ante), s 19 (as amended) (see PARA 324 ante), s 20 (as substituted) (see PARA 326 ante), or s 21(1) (see the text to notes 1-6 supra).

10 *Ibid* s 21(2).

11 *Ibid* s 21(2).

12 ie in *ibid* Pt I (ss 1-179) (as amended).

13 For the meaning of 'database' see PARA 731 post.

14 Copyright, Designs and Patents Act 1988 s 21(3)(a) (amended by the Copyright (Computer Programs) Regulations 1992, SI 1992/3233, regs 2, 5(1); and the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, regs 4(1), 7(a)).

15 Copyright, Designs and Patents Act 1988 s 21(3)(a)(i).

16 *Ibid* s 21(3)(a)(ii).

17 *Ibid* s 21(3)(a)(iii).

18 *Ibid* s 21(3)(ab) (added by the Copyright (Computer Programs) Regulations 1992, SI 1992/3233, regs 2, 5(2)). In relation to a computer program, a 'translation' includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code: Copyright, Designs and Patents Act 1988 s 21(4) (amended by the Copyright (Computer Programs) Regulations 1992, SI 1992/3233, regs 2, 5(3)).

19 Copyright, Designs and Patents Act 1988 s 21(3)(ac) (added by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, regs 4(1), 7(b)).

20 Copyright, Designs and Patents Act 1988 s 21(3)(b).

21 *Ibid* s 21(5). For the meaning of 'copying' see PARA 314 ante.

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G. AUTHORISING INFRINGEMENTS

328. Authorising infringements.

It is also an infringement of copyright for a person who is not the copyright owner or his licensee to authorise a third party to do an infringing act¹. 'Authorise' means to grant or purport to grant, expressly or by implication, the right to do the act complained of². Thus it is an infringement of copyright to let the right of performing a film in public³, to purport to sell the right to print and publish a manuscript⁴, or to sell a gramophone record with a view to its public performance⁵, where the acts contemplated would, if done, constitute infringements of copyright. The act of authorisation may take place abroad, provided that the act authorised took place in the United Kingdom⁶. A person is guilty of authorising infringement only if the primary actor was himself guilty of infringement⁷ but such liability may be limited by the terms of the arrangements between the parties⁸.

1 See the Copyright, Designs and Patents Act 1988 s 16(2); and PARA 312 ante. See also *Falcon v Famous Players Film Co* [1926] 2 KB 474 at 499, CA per Atkin LJ.

2 *CBS Songs Ltd v Amstrad Consumer Electronics plc* [1988] AC 1013, [1988] 2 All ER 484, HL (supply for domestic use of recording equipment with high-speed facilities for copying tapes held not to be authorising the making of infringing copies). See also *Keays v Dempster* [1994] FSR 554 (approval of photograph for inclusion in a book but where publisher responsible for obtaining copyright clearance held not to be authorising); *Durand v Molino* [2000] ECDR 620 (not preventing a photographer from taking a photograph of a new painting not authorisation).

3 *Falcon v Famous Players Film Co* [1926] 2 KB 474, CA. It was held in *Fenning Film Service Ltd v Wolverhampton, Walsall and District Cinemas Ltd* [1914] 3 KB 1171, that it was an infringement to advertise a proposed exhibition of a film, but the basis of that decision was criticised by McCardie J in *Performing Right Society Ltd v Mitchell and Booker (Palais de Danse) Ltd* [1924] 1 KB 762 at 773.

4 *Evans v E Hulton & Co Ltd* (1924) 131 LT 534; *Ash v Hutchinson & Co (Publishers) Ltd* [1936] Ch 489 at 496, [1936] 2 All ER 1496 at 1500; and see *Bolton v London Exhibitions Ltd and Weiners Ltd* (1898) 14 TLR 550 (where it was held to be an infringement to order the supply of a poster containing infringing matter).

5 *Monckton v Pathé Frères Pathephone Ltd* [1914] 1 KB 395 at 403, CA, per Buckley LJ.

6 *ABKCO Music & Records Inc v Music Collection International Ltd* [1995] RPC 657. For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

7 *Nelson v Rye* [1996] 2 All ER 186, [1996] FSR 313. See also *Experience Hendrix LLC v Purple Haze Records Ltd* [2005] EWHC 249 (Ch), [2005] IP & T 977, (2005) Times, 5 May; *MCA Records Inc v Charly Records Ltd* [2001] EWCA Civ 1441, [2003] 1 BCLC 93, [2002] EMLR 1 (both concerning liability of a director for infringement by a company).

8 *Keays v Dempster* [1994] FSR 554 (contractual responsibility for obtaining copyright clearance placed on publisher; and author not liable for infringement).

UPDATE

328 Authorising infringements

NOTE 1--See *Twentieth Century Fox Film Corp v Newzbin Ltd* [2010] EWHC 608 (Ch), [2010] All ER (D) 43 (Apr) (authorising infringement without licence of owner; website indexing films and members downloading).

NOTE 7--*MCA Records Inc*, cited, applied: *Societa Esplosivi Industriali SPA v Ordnance Technologies Ltd (No 2)* [2007] EWHC 2875 (Ch), [2008] 2 All ER 622.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(8) ACTS RESTRICTED BY COPYRIGHT/(iii) Secondary Infringement of Copyright/329. Importing infringing copies.

(iii) Secondary Infringement of Copyright

329. Importing infringing copies.

The copyright¹ in a work is infringed² by a person who, without the licence of the copyright owner³, imports into the United Kingdom⁴, otherwise than for his private and domestic use, an article which is, and which he knows or has reason to believe⁵ is, an infringing copy⁶ of the work⁷.

1 For the meaning of 'copyright' see PARA 57 ante.

2 The subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

3 As to the licence of the copyright owner see PARAS 121, 175 notes 4, 6 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 In *LA Gear Inc v Hi-Tech Sports plc* [1992] FSR 121 at 130 it was held that importation occurs when the goods are physically received into the United Kingdom so as to become subject to the provisions of the Copyright, Designs and Patents Act 1988. For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

5 For the meaning of 'know or have reason to believe' see PARA 334 post.

6 For the meaning of 'infringing copy' see PARA 335 post.

7 Copyright, Designs and Patents Act 1988 ss 16(4), 22. See also s 27(3), (5); and PARA 335 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(8) ACTS RESTRICTED BY COPYRIGHT/(iii) Secondary Infringement of Copyright/330. Possessing or dealing with infringing copies.

330. Possessing or dealing with infringing copies.

The copyright¹ in a work is infringed² by a person who, without the licence of the copyright owner³:

- 255 (1) possesses⁴ in the course of a business⁵;
- 256 (2) sells⁶ or lets for hire, or offers⁷ or exposes for sale⁸ or hire⁹;
- 257 (3) in the course of a business exhibits in public¹⁰ or distributes¹¹; or
- 258 (4) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright¹²,

an article which is, and which he knows or has reason to believe¹³ is, an infringing copy¹⁴ of the work¹⁵.

1 For the meaning of 'copyright' see PARA 57 ante.

2 The subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

3 As to the licence of the copyright owner see PARAS 121, 175 notes 4, 6 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 It is likely that possession by a servant or employee will suffice: see eg *Towers & Co Ltd v Gray* [1961] 2 QB 351, [1961] 2 All ER 68, DC. Mere physical possession without having any control over goods may not amount to possession: see eg *Bellerby v Carle* [1983] 2 AC 101, [1983] 1 All ER 1031, HL.

5 Copyright, Designs and Patents Act 1988 s 23(a). For the meaning of 'business' see PARA 105 note 6 ante. The words 'in the course of business' in the Copyright, Designs and Patents Act 1988 have no different meaning than the meaning attributed to them in other legislation: *Pensher Security Door Co Ltd v Sunderland City Council* [2000] RPC 249, [1999] All ER (D) 398, CA. It has been held that the concept of 'in the course of a business' conveys the idea of some degree of regularity of dealing and does not cover a one-off adventure in the way of trade: *Davies v Sumner* [1984] 3 All ER 831, [1984] 1 WLR 1301, HL. In *R & B Customs Brokers Co Ltd v United Dominions Trust Ltd (Saunders Abbott (1980) Ltd, third party)* [1988] 1 All ER 847 at 854, [1988] 1 WLR 321 at 330, CA, a distinction was drawn between transactions which are an integral part of the business and are thus 'in the course of a business' and those which are merely incidental to its being carried on. A local authority acts in the course of a business where it is a local housing authority: *Pensher Security Door Co Ltd v Sunderland City Council* supra. See also *LA Gear Inc v Hi-Tech Sports plc* [1992] FSR 121 at 138, CA.

6 A person who sells may include a person, such as an employee, who actually hands over the infringing copy to a purchaser and takes charge of the money, even though the contract of sale is between his employer and the purchaser: see eg *Preston v Albuery* [1964] 2 QB 796, [1963] 3 All ER 897, DC.

7 Since the Copyright, Designs and Patents Act 1988 refers to separate acts of selling, offering for sale and exposing for sale, it is thought that the expression 'offers for sale' would be interpreted according to the general law of contract so that exposure of goods in a shop window would be held to be an invitation to treat: see *Fisher v Bell* [1961] 1 QB 394, [1960] 3 All ER 731; *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* [1953] 1 QB 401, [1953] 1 All ER 482, CA. An advertisement may be no more than an invitation to treat: see *Partridge v Crittenden* [1968] 2 All ER 421, [1968] 1 WLR 1204, DC.

8 It has been held that an article which is visible to the intending purchaser is exposed for sale, even though it cannot properly be inspected by him because of intervening packaging: *Wheat v Brown* [1892] 1 QB 418.

9 Copyright, Designs and Patents Act 1988 s 23(b).

10 This includes the exhibition of a film in public: *Hawkes & Son (London) Ltd v Paramount Film Service Ltd* [1934] Ch 593, CA. As to whether production of a sample amounts to exhibiting by way of trade see *Britain v Kennedy* (1902) 19 TLR 122. It is possible that showing goods at a trade fair or exhibition without attempting to sell or let them for hire would amount to exhibiting to the public.

11 Copyright, Designs and Patents Act 1988 s 23(c). It has been held that a bookbinder does not distribute by returning copies to the person who has employed him to bind them: *I Whitaker & Sons Ltd v Publishers' Circular Ltd* (1946) MacG Cop Cas (1946-47) 10.

12 Copyright, Designs and Patents Act 1988 s 23(d).

13 For the meaning of 'know or have reason to believe' see PARA 334 post.

14 For the meaning of 'infringing copy' see PARA 335 post.

15 Copyright, Designs and Patents Act 1988 ss 16(4), 23.

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331. Providing means for making infringing copies.

Copyright¹ in a work is infringed² by a person who, without the licence of the copyright owner³:

- 259 (1) makes⁴;
- 260 (2) imports into the United Kingdom⁵;
- 261 (3) possesses⁶ in the course of a business⁷; or
- 262 (4) sells⁸ or lets for hire, or offers⁹ or exposes for sale¹⁰ or hire¹¹,

an article specifically designed or adapted for making copies¹² of that work, knowing or having reason to believe¹³ that it is to be used to make infringing copies¹⁴.

Copyright in a work is also infringed by a person who, without the licence of the copyright owner, transmits the work by means of a telecommunications system¹⁵, otherwise than by communication to the public¹⁶, knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in the United Kingdom or elsewhere¹⁷.

1 For the meaning of 'copyright' see PARA 57 ante.

2 The subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

3 As to the licence of the copyright owner see PARAS 121, 175 notes 4, 6 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 Copyright, Designs and Patents Act 1988 s 24(1)(a).

5 Ibid s 24(1)(b). As to importation see PARA 329 note 4 ante. For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

6 As to possession see PARA 330 note 4 ante.

7 Copyright, Designs and Patents Act 1988 s 24(1)(c). For the meaning of 'business' see PARA 105 note 6 ante. As to acts in the course of a business see PARA 330 note 5 ante.

8 As to selling see PARA 330 note 6 ante.

9 As to offering for sale see PARA 330 note 7 ante.

10 As to exposing for sale see PARA 330 note 8 ante.

11 Copyright, Designs and Patents Act 1988 s 24(1)(d).

12 For the meaning of 'copies' see PARA 314 ante.

13 For the meaning of 'know or have reason to believe' see PARA 334 post.

14 Copyright, Designs and Patents Act 1988 ss 16(4), 24(1). For the meaning of 'infringing copy' see PARA 335 post. Section 24 is designed to catch 'dedicated' copying equipment and not commercially available duplicating equipment such as photocopiers and tape-to-tape recorders. It does not cover such items as records or tapes from which unlawful copies may be made: see *CBS Songs Ltd v Amstrad Consumer Electronics plc* [1988] AC 1013, [1988] 2 All ER 484, HL; *Rudd v Secretary of State for Trade and Industry* [1987] 2 All ER 553, [1987] 1 WLR 786, HL.

15 For the meaning of 'telecommunications system' see PARA 89 note 2 ante.

16 For the meaning of 'communication to the public' see PARA 326 ante.

17 Copyright, Designs and Patents Act 1988 s 24(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 5(a)).

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332. Permitting use of premises for infringing performance.

Where the copyright¹ in a literary², dramatic³ or musical⁴ work is infringed⁵ by a performance⁶ at a place of public entertainment⁷, any person who gave permission for that place to be used for the performance is also liable for the infringement unless, when he gave permission, he believed on reasonable grounds that the performance would not infringe copyright⁸.

A person does not permit a work to be performed unless the permission is related to the work the performance of which is complained of; and such permission is not to be inferred from a merely general authority to use a theatre for the performance of musical works⁹.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 Subject to the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144A) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

6 For the meaning of 'performance' see PARA 324 ante.

7 For these purposes, 'place of public entertainment' includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment: Copyright, Designs and Patents Act 1988 s 25(2).

8 Ibid ss 16(4), 25(1).

9 *Performing Right Society Ltd v Caryl Theatrical Syndicate Ltd* [1924] 1 KB 1 at 15, CA, per Atkin LJ (in this case, Scrutton LJ based his judgment on the proposition that a person does not permit what he cannot control or the performance of work which he does not know is being performed); *Adelaide Corp v Australasian Performing Right Association Ltd* (1928) 40 CLR 481, Aust HC; cf *Performing Right Society Ltd v Bray UDC* [1930] AC 377, PC (where the defendants had approved the programme of music to be played). See also the cases cited in para 336 note 3 post.

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333. Providing apparatus for infringing performance.

Where copyright in a work¹ is infringed by a public performance of the work², or by the playing or showing of the work in public³, by means of apparatus for playing sound recordings⁴, showing films⁵ or receiving visual images or sounds conveyed by electronic means⁶, the following persons are also liable⁷ for the infringement⁸:

- 263 (1) a person who supplied the apparatus, or any substantial part of it, if, when he supplied the apparatus or part:
 - 9 12. (a) he knew or had reason to believe⁹ that the apparatus was likely to be so used as to infringe copyright¹⁰; or
 - 13. (b) in the case of apparatus whose normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright¹¹;
- 10 264 (2) an occupier of premises who gave permission for the apparatus to be brought onto the premises if, when he gave permission, he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright¹²;
- 265 (3) a person who supplied a copy of a sound recording or film used to infringe copyright if, when he supplied it, he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright¹³.

1 For the meanings of 'copyright' and 'copyright work' see PARA 57 ante.

2 See PARA 324 ante.

3 See PARA 325 ante.

4 Copyright, Designs and Patents Act 1988 s 26(1)(a). For the meaning of 'sound recording' see PARA 84 ante.

5 Ibid s 26(1)(b). For the meaning of 'film' see PARA 86 ante.

6 Ibid s 26(1)(c). For the meaning of 'electronic' see PARA 184 note 2 ante.

7 The subject to the provisions of ibid Pt I Ch III (ss 28-76) (as amended) (permitted acts: see PARAS 337 et seq, 734 post) and Pt I Ch VII (ss 116-144) (as amended) (copyright licensing: see PARAS 182 et seq, 223 et seq ante).

8 Ibid ss 16(4), 26(1).

9 For the meaning of 'know or have reason to believe' see PARA 334 post.

10 Copyright, Designs and Patents Act 1988 s 26(2)(a).

11 Ibid s 26(2)(b).

12 Ibid s 26(3).

13 Ibid s 26(4).

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334. Meaning of 'know or have reason to believe'.

In order for a person to be liable for secondary infringement of copyright, it is necessary that at the time of the relevant dealing he knew or had reason to believe¹ that the articles with which he was dealing were infringing copies².

'Knowledge' includes deliberately turning a blind eye as to whether or not the articles are or would be infringements³. The concept of 'reason to believe' involves both knowledge of sufficient facts from which a reasonable person would arrive at the relevant belief and the lapse of a sufficient period of time⁴ to enable the reasonable person to convert the facts into a reasonable belief⁵. Where, however, a person is also in possession of credible but contradictory facts, it is unlikely that he has the requisite 'reason to believe'⁶. In many cases the copyright owner must give notice of the facts by way of a warning letter. It is not sufficient merely to claim that his rights have been infringed; he should specifically identify the works alleged to be infringed⁷. Knowledge that infringing copies are rife in the market does not amount to the required specific knowledge or belief that a particular copy is an infringement⁸. However, a person who receives a claim that he is indirectly infringing copyright is capable of becoming a person with reason to believe if he carries out no sensible inquiries, and does absolutely nothing in the face of continued assertions of the copyright by the owner⁹. Once a person has notice of the relevant facts, he cannot contend that he was without the requisite knowledge or reason to believe because he had in good faith a mistaken belief that in law there was no infringement¹⁰.

1 The phrase 'reason to believe' was new to the Copyright, Designs and Patents Act 1988; under the Copyright Act 1956 (repealed) the claimant had to prove knowledge on the part of the defendant. The expression 'reason to believe' must be construed in accordance with its natural meaning and not by reference to principles developed under the Copyright Act 1956 (repealed) in relation to the requirement of knowledge: *LA Gear Inc v Hi-Tech Sports plc* [1992] FSR 121 at 129.

2 See the Copyright, Designs and Patents Act 1988 ss 22-26 (as amended); and PARAS 329-333 ante. For the meaning of 'infringing copy' see PARA 335 post.

3 Cf *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445; *James & Son Ltd v Smeed* [1955] 1 QB 78, [1954] 3 All ER 273; *Ross v Moss* [1965] 2 QB 396, [1965] 3 All ER 145, DC; *Politechnika Ipari Szovetkezet v Dallas Print Transfers Ltd* [1982] FSR 529, DC; *AP Besson Ltd v Fulleon Ltd and Amlani* [1986] FSR 319; *ZYX Music GmbH v King* [1995] 3 All ER 1, [1995] FSR 566 (affd [1997] 2 All ER 129, [1997] EMLR 319, CA).

4 See eg *Van Dusen v Kritz* [1936] 2 KB 176; *Arrowin Ltd v Trimguard (UK) Ltd* [1984] RPC 581; *LA Gear Inc v Hi-Tech Sports plc* [1992] FSR 121 at 129, 138; *Nouveau Fabrics Ltd v Voyage Decoration Ltd* [2004] EWHC 895 (Ch), [2004] All ER (D) 288 (Apr).

5 *LA Gear Inc v Hi-Tech Sports plc* [1992] FSR 121 at 129, CA. See also *ZYX Music GmbH v King* [1995] 3 All ER 1, [1995] FSR 566 (affd [1997] 2 All ER 129, [1997] EMLR 319, CA); *Pensher Security Door Co Ltd v Sunderland City Council* [2000] RPC 249, [1999] All ER (D) 398, CA.

6 *Hutchison Personal Communications Ltd v Hook Advertising Ltd* [1995] FSR 365; cf *Arrowin Ltd v Trimguard (UK) Ltd* [1984] RPC 581; *International Business Machines Corp v Computer Imports Ltd* (1989) 14 IPR 225 at 251, NZ HC.

7 This follows from the definition of 'infringing copy' in the Copyright, Designs and Patents Act 1988 s 27(2) (see PARA 335 post) which defines an infringing copy as a copy whose making constituted an infringement of the copyright 'in the work in question'. This definition is expanded to cover imported copies: see s 27(3); and PARA 335 post. The courts have tended not to insist on strict adherence to this requirement where the defendant has had the opportunity of comparing the copyright owner's product with the infringement: *Politechnika Ipari*

Szovetkezet v Dallas Print Transfers Ltd [1982] FSR 529; *AP Besson Ltd v Fulleon Ltd and Amlani* [1986] FSR 319; *LA Gear Inc v Hi-Tech Sports plc* [1992] FSR 121, CA. See also *Vermaat v Boncrest Ltd (No 2)* [2002] FSR 531, [2001] All ER (D) 167 (Mar).

8 *Columbia Picture Industries Inc v Robinson* [1987] Ch 38, [1986] FSR 367.

9 *Nouveau Fabrics Ltd v Voyage Decoration Ltd* [2004] EWHC 895 (Ch), [2004] All ER (D) 288 (Apr).

10 *Sillitoe v McGraw-Hill Book Co (UK) Ltd* [1983] FSR 545 (mistaken belief in 'fair dealing' defence). As to innocent infringement see PARA 407 post.

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335. Meaning of 'infringing copy'.

'Infringing copy', in relation to a copyright work¹, is to be construed in accordance with the following provisions².

An article is an infringing copy if its making constituted an infringement of the copyright³ in the work in question⁴. An article is also an infringing copy if:

- 266 (1) it has been or is proposed to be imported⁵ into the United Kingdom⁶; and
- 267 (2) its making in the United Kingdom would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence⁷ agreement relating to that work⁸,

but nothing in this provision is to be construed as applying to an article which may lawfully be imported into the United Kingdom by virtue of any enforceable Community right⁹.

Where in any proceedings the question arises whether an article is an infringing copy and it is shown:

- 268 (a) that the article is a copy¹⁰ of the work¹¹; and
- 269 (b) that copyright subsists in the work or has subsisted at any time¹²,

it is to be presumed, until the contrary is proved, that the article was made at a time when copyright subsisted in the work¹³.

'Infringing copy' includes a copy falling to be treated as an infringing copy by virtue of any of the provisions relating to:

- 270 (i) making a single accessible copy for personal use¹⁴;
- 271 (ii) multiple copies for visually impaired persons¹⁵;
- 272 (iii) intermediate copies held by approved bodies¹⁶;
- 273 (iv) copies made for purposes of instruction or examination¹⁷;
- 274 (v) recordings made by educational establishments for educational purposes¹⁸;
- 275 (vi) reprographic copying by educational establishments for purposes of instruction¹⁹;
- 276 (vii) copies made by a librarian or archivist in reliance on a false declaration²⁰;
- 277 (viii) further copies, adaptations etc of work in electronic form retained on a transfer of the principal copy²¹;
- 278 (ix) copies made for the purpose of advertising artistic work for sale²²;
- 279 (x) copies made for the purpose of broadcast²³;
- 280 (xi) recording for the purposes of time-shifting²⁴;
- 281 (xii) photographs of broadcasts²⁵; or
- 282 (xiii) any provision of an order²⁶ in respect of a statutory licence for certain reprographic copying by educational establishments²⁷.

1 For the meaning of 'copyright work' see PARA 57 ante.

2 Copyright, Designs and Patents Act 1988 s 27(1). For the purposes of s 27 (as amended), the question whether the making of an article constituted an infringement of copyright, or would have done if the article had been made in the United Kingdom, is to be determined: (1) in relation to an article made on or after 1 July 1957 and before 1 August 1989, by reference to the Copyright Act 1956 (repealed); and (2) in relation to an article made before 1 June 1957, by reference to the Copyright Act 1911: Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 14(3). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

3 For the meaning of 'copyright' see PARA 57 ante; and as to infringement of copyright see PARA 311 et seq post.

4 Copyright, Designs and Patents Act 1988 s 27(2). An article is an infringing copy even if it only transiently infringes copyright: *Kabushiki Kaisha Sony Computer Entertainment Inc v Ball* [2004] EWHC 1738 (Ch), (2004) Times, 21 October, [2004] All ER (D) 334 (Jul).

5 As to importation see PARA 329 note 4 ante.

6 Copyright, Designs and Patents Act 1988 s 27(3)(a).

7 For the meaning of 'exclusive licence' see PARA 176 ante; and as to the rights of exclusive licensees see PARAS 176 ante, 429 post.

8 Copyright, Designs and Patents Act 1988 s 27(3)(b). See also PARA 329 ante.

9 Ibid s 27(5). This gives effect to the principle of exhaustion of rights developed by the European Court of Justice in relation to the exercise of intellectual property rights, ie that, once copies of a work protected by an industrial property right have been lawfully placed on the market in one member state by or with the consent of the owner of the right, industrial property rights cannot be invoked to prevent copies from entering other member states: see eg Case 119/75 *Terrapin (Overseas) Ltd v Terranova Industrie CA Kapferer & Co* [1976] ECR 1039, [1976] 2 CMLR 482, ECJ (trade mark). Whilst the marketing of products in a country outside the European Union does not exhaust the copyright in those products, the enforcement of that copyright by the prohibition on importing the products from outside the European Union into a member state may, in exceptional circumstances, involve an abuse of a dominant market position: Case T-198/98 *Micro Leader Business v European Commission* [1999] ECR II-3989, [2000] All ER (EC) 361, CFI. For the meaning of 'enforceable community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

10 For the meaning of 'copy' see PARA 314 ante.

11 Copyright, Designs and Patents Act 1988 s 27(4)(a).

12 Ibid s 27(4)(b).

13 Ibid s 27(4).

14 Ie ibid s 31A(6), (9) (as added): see PARA 343 post.

15 Ie ibid s 31B(9), (10) (as added): see PARA 344 post.

16 Ie ibid s 31C(2) (as added): see PARA 345 post.

17 Ie ibid s 32(5): see PARA 347 post.

18 Ie ibid s 35(3): see PARA 350 post.

19 Ie ibid s 36(5): see PARA 351 post.

20 Ie ibid s 37(3)(b): see PARAS 356-357, 361 post.

21 Ie ibid s 56(2): see PARA 383 post.

22 Ie ibid s 63(2): see PARA 390 post.

23 Ie ibid s 68(4): see PARA 396 post.

24 Ie ibid s 70(2): see PARA 398 post.

25 Ie ibid s 71(2): see PARA 399 post.

26 Ie an order under ibid s 141: see PARA 189 ante.

27 Ibid s 27(6) (amended by the Copyright (Visually Impaired Persons) Act 2002 s 7(1); and the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 2(2), 3, 20(3), Sch 2).

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336. Acts of employees or agents.

A person is liable for any infringement of copyright¹ committed by his employees in the course of their employment, and it is no defence that he may have been ignorant of the act of infringement or may have given a general warning or prohibition against the doing of acts which might amount to an infringement². A person is also liable for any infringement of copyright by another which he has actively directed, counselled or aided³. An employee is not, however, liable for infringements of copyright committed by others whom he has engaged as employees for the common employer⁴. The Crown is liable in respect of infringements committed by the Crown's servants or agents within their authority⁵.

1 As to infringement of copyright see PARA 311 et seq ante.

2 As to the general principle of an employer's or principal's liability for the torts of an employee or agent see AGENCY vol 1 (2008) PARA 150 et seq; TORT vol 97 (2010) PARA 680 et seq.

3 *Performing Right Society Ltd v Mitchell and Booker (Palais de Danse) Ltd* [1924] 1 KB 762; *Performing Right Society Ltd v Bradford Corpn* (1921) MacG Cop Cas (1917-23) 309; and see *Australasian Performing Right Association Ltd v Miles* [1962] NSW 405, NSW SC; *Australasian Performing Right Association Ltd v Koolman* [1969] NZLR 273; *C Evans & Sons Ltd v Spriteband Ltd* [1985] 2 All ER 415, [1985] 1 WLR 317, CA; *MCA Records Inc v Charly Records Ltd* [2001] EWCA Civ 1441, [2003] 1 BCLC 93, [2002] EMLR 1; *Experience Hendrix LLC v Purple Haze Records Ltd* [2005] EWHC 249 (Ch), [2005] IP & T 977, (2005) Times, 5 May.

4 *Performing Right Society Ltd v Caryl Theatrical Syndicate Ltd* [1924] 1 KB 1, CA. It was an infringement of copyright under the Dramatic Copyright Act 1833 (repealed) to cause a work to be represented at any place of dramatic entertainment; and it was decided, in reference to that Act, that the owner of a theatre who gave full control to another on the terms of sharing gross takings (*Lyon v Knowles* (1864) 5 B & S 751), or who let the theatre to another (*Russell v Briant* (1849) 8 CB 836), did not cause to be represented plays performed in pursuance of such arrangements. Where, however, the owner heard the performance and gave the performer a free hand (*Monaghan v Taylor* (1886) 2 TLR 685) or retained full control of the performance (*Marsh v Conquest* (1864) 17 CBNS 418), an infringement was committed. Notwithstanding the alteration of the law introduced by the Copyright Act 1911, and the use of the expression 'authorise' in s 1(2) (repealed) and in the Copyright, Designs and Patents Act 1988 s 16(2) (see PARAS 312, 328 ante), those cases may still be applied: see *Performing Right Society Ltd v Caryl Theatrical Syndicate Ltd* supra. As to the infringement of copyright by permitting a place of public entertainment to be used for a performance of a work in public see PARA 332 ante. A person who had himself contracted to do printing did not 'cause a work to be printed' within the meaning of the Copyright Act 1842 s 15 (repealed) by permitting it to be printed by another: *Kelly's Directories Ltd v Gavin and Lloyds* [1902] 1 Ch 631, CA.

5 See PARA 410 post.

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(9) PERMITTED ACTS

(i) In general

337. Application of provisions.

The Copyright, Designs and Patents Act 1988¹ specifies acts which may be done in relation to copyright works² notwithstanding the subsistence of copyright³; the statutory provisions relate only to the question of infringement of copyright⁴ and do not affect any other right or obligation restricting the doing of any of the specified acts⁵.

Where it is provided⁶ that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description⁷. No inference is, however, to be drawn from the description of any act which may⁸ be done without infringing copyright as to the scope of the acts restricted by the copyright⁹ in any description of work¹⁰.

The provisions are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision¹¹.

¹ I.e. the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended): see PARAS 338 et seq, 734 post.

² For the meaning of 'copyright work' see PARA 57 ante.

³ As to when copyright subsists in works of various descriptions see PARA 54 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

⁴ As to infringement of copyright see PARA 311 et seq ante.

⁵ Copyright, Designs and Patents Act 1988 s 28(1). As to the applicability of these exceptions to publication right see PARA 497 et seq post.

⁶ I.e. by *ibid* Pt I Ch III (as amended).

⁷ *Ibid* s 28(2).

⁸ I.e. by virtue of *ibid* Pt I Ch III (as amended).

⁹ For the meaning of 'acts restricted by the copyright' see PARA 311 ante.

¹⁰ Copyright, Designs and Patents Act 1988 s 28(3).

¹¹ *Ibid* s 28(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(ii) Fair Dealing/338. Research and private study.

(ii) Fair Dealing

338. Research and private study.

Fair dealing¹ with a literary², dramatic³, musical⁴ or artistic⁵ work for the purposes of research for a non-commercial purpose does not infringe any copyright⁶ in the work provided that it is accompanied by a sufficient acknowledgement⁷. However, no acknowledgement is required in connection with fair dealing for these purposes where this would be impossible for reasons of practicality or otherwise⁸. Fair dealing with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work⁹.

Fair dealing with the typographical arrangement of a published edition¹⁰ for the purposes of research or private study does not infringe any copyright in the arrangement¹¹.

Copying¹² by a person other than the researcher or student himself is not fair dealing if: (1) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations¹³ relating to the copying by librarians of articles or parts of published works would not permit¹⁴ to be done¹⁵; or (2) in any other case, the person doing the copying knows or has reason to believe¹⁶ that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose¹⁷.

It is not fair dealing to convert a computer program expressed in a low level language into a version expressed in a higher level language¹⁸, or incidentally in the course of so converting the program, to copy it¹⁹; these acts being permitted if done in accordance with the provisions²⁰ relating to decompilation²¹. Also, it is not fair dealing to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program; these acts being permitted if done in accordance with the provisions²² relating to observing, studying and testing computer programs²³.

1 As to fair dealing generally see PARA 340 post.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

7 Copyright, Designs and Patents Act 1988 s 29(1) (substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 9(a)). As to the application of the Copyright, Designs and Patents Act 1988 s 29 (as amended) see PARA 337 ante.

'Sufficient acknowledgment' means an acknowledgment identifying the work in question by its title or other description, and identifying the author unless: (1) in the case of a published work, it is published anonymously; (2) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry: s 178. For the meaning of 'published' see PARA 63 ante; and for the meaning of 'author' see PARA 110 ante. The television transmission of a logo can constitute identification for the purposes of s 178, especially if the logo is the means by which the author of a television programme is accustomed to identify itself, and if the use of the correct name is unlikely to have any particular significance to the bulk of the audience: *Pro Sieben Media AG v Carlton UK Television Ltd* [1999] FSR 610, [1999] EMLR 109, CA. In *Sillitoe v*

McGraw-Hill Book Co (UK) Ltd [1983] FSR 545, it was said, probably obiter, that the acknowledgment had to extend to acknowledging that the work was in copyright.

8 Copyright, Designs and Patents Act 1988 s 29(1B) (s 29(1B), (1C) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 9(b)).

9 Copyright, Designs and Patents Act 1988 s 29(1C) (as added: see note 8 supra). 'Private study' does not include any study which is directly or indirectly for a commercial purpose: s 178 (definition added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 15(3)).

10 For the meaning of 'published edition' see PARA 92 ante.

11 Copyright, Designs and Patents Act 1988 s 29(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 9(c)). See eg *De Garis v Neville Jeffress Pidler Pty Ltd* (1990) 18 IPR 292 (supply of copies by press cuttings agency not fair dealing, although use by its customers might be).

12 For the meaning of 'copying' see PARA 314 ante.

13 Ie regulations under the Copyright, Designs and Patents Act 1988 s 40: see PARA 353 post.

14 Ie under ibid s 38 (as amended) (see PARA 356 post) or s 39 (as amended) (see PARA 357 post).

15 Ibid s 29(3)(a).

16 For the meaning of 'know or have reason to believe' see PARA 334 ante.

17 Copyright, Designs and Patents Act 1988 s 29(3)(b).

18 Ibid s 29(4)(a) (s 29(4) added by the Copyright (Computer Programs) Regulations 1992, SI 1992/3233, regs 2, 7, 12(2)).

19 Copyright, Designs and Patents Act 1988 s 29(4)(b) (as added: see note 18 supra).

20 Ie ibid s 50B (as added): see PARA 372 post.

21 Ibid s 29(4) (as added: see note 18 supra).

22 Ie ibid s 50BA (as added): see PARA 373 post.

23 Ibid s 29(4A) (added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 9(d)).

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339. Criticism, review and news reporting.

Fair dealing¹ with a work² for the purpose of criticism or review³, of that or another work or of a performance⁴ of a work, does not infringe any copyright⁵ in the work, provided that it is accompanied by a sufficient acknowledgment⁶ and provided that the work has been made available to the public⁷.

Fair dealing with a work, other than a photograph⁸, for the purpose of reporting current events does not infringe any copyright in the work, provided that it is accompanied by a sufficient acknowledgment⁹. No acknowledgment is, however, required in connection with the reporting of current events by means of a sound recording¹⁰, film¹¹, or broadcast where this would be impossible for reasons of practicality or otherwise¹².

In certain rare circumstances the right of freedom of expression¹³ will come into conflict with the protection of copyright afforded by the Copyright, Designs and Patents Act 1988, notwithstanding the express exceptions to be found in the Act. In these cases a court will be bound, in so far as it is able, to apply the Act in a manner that accommodates the right of freedom of expression¹⁴.

1 As to fair dealing generally see PARA 340 post.

2 The work in question must be a work in which copyright subsists: *Fraser-Woodward Ltd v British Broadcasting Corp* [2005] EWHC 472 (Ch), [2005] FSR 762, [2006] IP & T 15.

3 'Criticism or review' is an expression of wide and indefinite scope which should be interpreted liberally: *Pro Sieben Media AG v Carlton UK Television Ltd* [1999] FSR 610, [1999] EMLR 109, CA. In order for something to qualify as criticism or review it is not necessary that there be specific reference to the content of that which is being criticised. Likewise, there is no requirement of necessity of use in respect of the work in question: *Fraser-Woodward Ltd v British Broadcasting Corp* [2005] EWHC 472 (Ch), [2005] FSR 762, [2006] IP & T 15. See also *Ashdown v Telegraph Group Ltd* [2001] EWCA Civ 1142, [2002] Ch 149, [2001] 4 All ER 666; *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch), [2006] All ER (D) 276 (Mar).

4 For the meaning of 'performance' see PARA 324 ante.

5 For the meanings of 'copyright' and 'copyright work' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

6 For the meaning of 'sufficient acknowledgement' see PARA 338 note 7 ante.

7 Copyright, Designs and Patents Act 1988 s 30(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 10(1)(a)). As to the application of the Copyright, Designs and Patents Act 1988 s 30 (as amended) see PARA 337 ante.

For these purposes, a work has been made available to the public if it has been made available by any means, including:

- 12 (1) the issue of copies to the public;
- 13 (2) making the work available by means of an electronic retrieval system;
- 14 (3) the rental or lending of copies of the work to the public;
- 15 (4) the performance, exhibition, playing or showing of the work in public;
- 16 (5) the communication to the public of the work,

but in determining generally for these purposes whether a work has been made available to the public no account may be taken of any unauthorised act: Copyright, Designs and Patents Act 1988 s 30(1A) (added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 10(1)(b)). For the meaning of 'copies' see PARA 314 ante; for the meaning of 'electronic' see PARA 184 note 2 ante; for the meanings of 'rental' and 'lending' see PARA 323 ante; for the meaning of 'communication to the public' see PARA 326 ante; and for the meaning of 'unauthorised' see PARA 63 note 30 ante. Circulation of copies of a personal journal to a number of carefully selected recipients, namely members of family, close friends and advisers does not amount to making it available to the public: *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch), [2006] All ER (D) 276 (Mar).

8 For the meaning of 'photograph' see PARA 77 ante.

9 Copyright, Designs and Patents Act 1988 s 30(2). 'Current events' is an expression of wide and indefinite scope which should be interpreted liberally. Media coverage of an event may come within the ambit of current events as may the sale of an interview to the media: *Pro Sieben Media AG v Carlton UK Television Ltd* [1999] FSR 610, [1999] EMLR 109, CA. See also *Hyde Park Residence Ltd v Yelland* [2001] Ch 143, [2000] EMLR 363, [2000] IP & T 412, CA; *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch), [2006] All ER (D) 276 (Mar).

Any provision in an agreement is void in so far as it purports to prohibit or restrict relevant dealing with a broadcast in any circumstances where, by virtue of the Copyright, Designs and Patents Act 1988 s 30(2), copyright in the broadcast is not infringed: Broadcasting Act 1996 s 137(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). For these purposes, 'relevant dealing', in relation to a broadcast, means dealing by communicating to the public any visual images taken from that broadcast; and 'broadcast' and 'communicating to the public' have the same meaning as in the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended): Broadcasting Act 1996 s 137(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 2 para 21). For the meaning of 'broadcast' see PARA 89 ante; and for the meaning of 'communication to the public' see PARA 326 ante. Thus eg broadcasting short extracts, falling within the fair dealing provisions, from a sports event by taking the signal off air from another broadcaster cannot be excluded by contract. For an example of such fair dealing see *British Broadcasting Corp'n v British Satellite Broadcasting Ltd* [1992] Ch 141, [1991] 3 All ER 833.

10 For the meaning of 'sound recording' see PARA 84 ante.

11 For the meaning of 'film' see PARA 86 ante.

12 Copyright, Designs and Patents Act 1988 s 30(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 10(1)(c)).

13 Ie the right protected under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 10 and the Human Rights Act 1998: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 158.

14 *Ashdown v Telegraph Group Ltd* [2001] EWCA Civ 1142, [2002] Ch 149, [2001] 4 All ER 666.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(ii) Fair Dealing/340. Fair dealing generally.

340. Fair dealing generally.

An interim injunction restraining publication of an article will not normally be granted if 'fair dealing'¹ is pleaded².

In determining whether, in preparing one publication, an unfair use has been made of another, the nature of the two publications, and the likelihood or unlikelihood of their entering into competition with each other is not only a relevant factor but may be the determining factor in the case³. The reprinting of parts of an article with comments, not by way of criticism, but for the purpose of an article itself being read as though it were the defendant's original work, and so that, as independent matter, it may make the defendant's publication attractive, cannot be justified⁴. Fair dealing is not, however, limited to literary criticism⁵.

The mere republication of a copyright work cannot be defended on the ground that it is intended for private study; thus the publication of a book of examination papers with answers for the private study of students would infringe the copyright in a book containing the papers only, since such a publication would not be a fair dealing with the first work⁶.

It is possible that the defence might not be open to a publisher who publishes what is in itself a fair criticism if he has an illegal motive in effecting the publication⁷. It seems that the publication of confidential information which has been leaked by a third party and which, without the leak, could not have been published, cannot constitute fair dealing⁸ except in rare cases where it may be justified by the right to freedom of expression⁹.

The permission to reproduce for public criticism, review, or newspaper summary, while it may apply to unpublished musical or dramatic works which have been performed in public, does not apply as readily to unpublished literary works, for it would not be fair to the author to make such use of such works while unpublished¹⁰.

1 As to the provisions relating to fair dealing see PARAS 338-339 ante.

2 *Fraser v Evans* [1969] 1 QB 349, [1969] 1 All ER 8, CA; *Hubbard v Vosper* [1972] 2 QB 84, [1972] 1 All ER 1023, CA; *Kennard v Lewis* [1983] FSR 346; *Lion Laboratories Ltd v Evans* [1985] QB 526, [1984] 2 All ER 417, CA. As to interim injunctions see also PARA 414 post.

3 *Weatherby & Sons v International Horse Agency and Exchange Ltd* [1910] 2 Ch 297 at 305 per Parker J; *Black v Murray & Son* (1870) 9 M 341; *Independent Television Publications Ltd v Time Out Ltd and Elliott, British Broadcasting Corp v Time Out Ltd and Elliott* [1984] FSR 64 at 75 (use of programme listings to provide alternative listings service; but for a special defence of statutory licence see now para 198 et seq ante); *Associated Newspaper Group plc v News Group Newspapers Ltd* [1986] RPC 515 (newspaper copying extracts from correspondence exclusively purchased by another newspaper); *De Garis v Neville Jeffress Pidler Pty Ltd* (1990) 18 IPR 292 (supply of photocopies by commercial press cuttings agency); *Express Newspapers plc v News (UK) Ltd* [1990] 3 All ER 376, [1990] 1 WLR 1320 (copying by newspaper of 'exclusive interviews' given to another); *Ashdown v Telegraph Group Ltd* [2001] EWCA Civ 1142, [2002] Ch 149, [2001] 4 All ER 666 (publication by newspaper having potential effect on subsequent publication of book); *IPC Media Ltd v News Group Newspapers Ltd* [2005] EWHC 317 (Ch), [2005] IP & T 994, [2005] EMLR 532 (advertisement featuring reproduction of cover of competing magazine).

4 *Ashdown v Telegraph Group Ltd* [2001] EWCA Civ 1142, [2002] Ch 149, [2001] 4 All ER 666 (most important passages of minute reproduced); *Walter v Steinkopff* [1892] 3 Ch 489 (two-fifths of article by well-known writer reprinted verbatim); *Hodges v Welsh* (1840) 2 I Eq R 266 (legal textbook writer not entitled to take at length all the reports on a particular subject); *Wilkins v Aikin* (1810) 17 Ves 422 (the user in an article on the same subject in architecture of some of the claimant's illustrations held unfair). See also *Whittingham v Wooler* (1817) 2 Swan 428; *Bell v Whitehead* (1839) 8 LJ Ch 141; *Campbell v Scott* (1842) 11 Sim 31; *Bohn v Bogue*

(1846) 7 LTOS 277; *Smith v Chatto* (1874) 31 LT 775. These cases were decided before the introduction of a statutory right to reproduce for purposes of criticism and must be read subject to that statutory provision.

5 *Hubbard v Vosper* [1972] 2 QB 84, [1972] 1 All ER 1023, CA; *Distillers Co (Biochemicals) Ltd v Times Newspapers Ltd* [1975] QB 613, [1975] 1 All ER 41; *Time Warner Entertainments Co LP v Channel Four Television Corp plc* [1994] EMLR 1, CA; *Fraser-Woodward Ltd v British Broadcasting Corp* [2005] EWHC 472 (Ch), [2005] FSR 762, [2006] IP & T 15.

6 *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 at 613 per Peterson J. See also *Sillitoe v McGraw-Hill Book Co (UK) Ltd* [1983] FSR 545 (copying of 'study notes' of books not fair dealing because no criticism offered).

7 *Johnstone v Bernard Jones Publications Ltd* [1938] Ch 599, [1938] 2 All ER 37.

8 See *Beloff v Pressdram Ltd* [1973] 1 All ER 241 (memorandum written by journalist in course of employment by newspaper leaked by member of staff of newspaper to contributor to another journal); *Hyde Park Residence Ltd v Yelland* [2001] Ch 143, [2000] EMLR 363, [2000] IP & T 412, CA (photographs given by former employee of copyright owner to journalist). The Copyright, Designs and Patents Act 1988 s 30(1) (as amended) (see PARA 339 ante) is designed to protect the critic or reviewer who bona fide wishes to use the copyright material to illustrate his review or criticism: *Banier v News Group Newspapers Ltd* [1997] FSR 812.

9 *Ashdown v Telegraph Group Ltd* [2001] EWCA Civ 1142, [2002] Ch 149, [2001] 4 All ER 666; and see PARA 339 text to notes 13-14 ante.

10 *British Oxygen Co Ltd v Liquid Air Ltd* [1925] Ch 383 at 393 per Romer J. See also *Queensland v TCN Channel Nine Pty Ltd* (1992) 25 IPR 58, Qld SC; *Beloff v Pressdram Ltd* [1973] 1 All ER 241; *Ashdown v Telegraph Group Ltd* [2001] EWCA Civ 1142, [2002] Ch 149, [2001] 4 All ER 666.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(iii) Temporary Copies and Incidental Inclusion/341. Making of temporary copies.

(iii) Temporary Copies and Incidental Inclusion

341. Making of temporary copies.

Copyright¹ in a literary work², other than a computer program or a database³, or in a dramatic⁴, musical⁵ or artistic⁶ work, the typographical arrangement of a published edition⁷, a sound recording⁸ or a film⁹, is not infringed¹¹ by the making of a temporary copy¹² which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable:

283 (1) a transmission of the work in a network between third parties by an intermediary¹³; or

284 (2) a lawful use of the work¹⁴,

and which has no independent economic significance¹⁵.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'database' see PARA 731 post.

4 For the meaning of 'dramatic work' see PARA 73 ante.

5 For the meaning of 'musical work' see PARA 73 ante.

6 For the meaning of 'artistic work' see PARA 75 ante.

7 For the meaning of 'published edition' see PARA 92 ante.

8 For the meaning of 'sound recording' see PARA 84 ante.

10 For the meaning of 'film' see PARA 86 ante.

11 As to infringement of copyright see PARA 311 et seq ante.

12 For the meaning of 'copy' see PARA 314 ante.

13 Copyright, Designs and Patents Act 1988 s 28A(a) (s 28A added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 8(1)).

14 Copyright, Designs and Patents Act 1988 s 28A(b) (as added: see note 13 supra).

15 Ibid s 28A (as added: see note 13 supra). As to the application of s 28A (as added) see PARA 337 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(iii) Temporary Copies and Incidental Inclusion/342. Incidental inclusion of copyright material.

342. Incidental inclusion of copyright material.

Copyright¹ in a work is not infringed by its incidental inclusion in an artistic work², sound recording³, film⁴ or broadcast⁵. Nor is the copyright infringed by the issue to the public of copies⁶, or the playing, showing or communication to the public⁷, of anything whose making was⁸ not an infringement of the copyright⁹.

A musical work¹⁰, words spoken or sung with music, or so much of a sound recording or broadcast as includes a musical work or such words, is not to be regarded as incidentally included in another work if it is deliberately included¹¹.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 For the meaning of 'artistic work' see PARA 75 ante.

3 For the meaning of 'sound recording' see PARA 84 ante.

4 For the meaning of 'film' see PARA 86 ante.

5 Copyright, Designs and Patents Act 1988 s 31(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(1)(d)). For the meaning of 'broadcast' see PARA 89 ante. As to the application of the Copyright, Designs and Patents Act 1988 s 31 (as amended) see PARA 337 ante. What is 'incidental' depends on the circumstances of each case, with the relevant question, for the purposes of testing incidentality, being why has work 'A' been included in work 'B': *Football Association Premier League Ltd v Panini UK Ltd* [2003] EWCA Civ 995, [2003] 4 All ER 1290, [2004] IP & T 17. See also *IPC Magazines Ltd v MGN Ltd* [1998] FSR 431; *Fraser-Woodward Ltd v British Broadcasting Corp* [2005] EWHC 472 (Ch), [2005] FSR 762, [2006] IP & T 15. As to specific provisions relating to the Olympic symbol and related representations see the Olympic Symbol (Protection) Act 1995 s 4 (as amended); and TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 494.

6 For the meaning of 'issue copies to the public' see PARA 322 ante.

7 For the meaning of 'communication to the public' see PARA 326 ante.

8 Ie by virtue of the Copyright, Designs and Patents Act 1988 s 31(1) (as amended): see the text to notes 1-5 supra.

9 Ibid s 31(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 6(2)(b)). For the purposes of the application of the Copyright, Designs and Patents Act 1988 s 31(2) (as amended) to things made before 1 August 1989, it is to be assumed that that provision was in force at all material times: s 170, Sch 1 para 14(4).

10 For the meaning of 'musical work' see PARA 73 ante.

11 Copyright, Designs and Patents Act 1988 s 31(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 3(1)(e)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(iv) Visual Impairment/343. Single accessible copies for personal use.

(iv) Visual Impairment

343. Single accessible copies for personal use.

If a visually impaired person¹ has lawful possession or lawful use of a copy² ('the master copy') of the whole or part of a literary³, dramatic⁴, musical⁵ or artistic work⁶, or a published edition⁷, which is not accessible⁸ to him because of the impairment, it is not an infringement of copyright⁹ in the work, or in the typographical arrangement of the published edition, for an accessible copy of the master copy to be made for his personal use¹⁰. However, this provision does not apply:

- 285 (1) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance¹¹ of the work or part of it¹²;
- 286 (2) if the master copy is of a database¹³, or part of a database, and the making of an accessible copy would infringe copyright in the database¹⁴; or
- 287 (3) in relation to the making of an accessible copy for a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner¹⁵ in a form that is accessible to that person¹⁶.

An accessible copy made under these provisions must be accompanied by a statement that it is so made¹⁷ and a sufficient acknowledgement¹⁸; and if a person makes such an accessible copy on behalf of a visually impaired person and charges for it, the sum charged must not exceed the cost of making and supplying the copy¹⁹.

If a person holds an accessible copy made under these provisions when he is not entitled to have it so made, the copy is to be treated as an infringing copy²⁰, unless he is a specified person²¹.

A person who holds an accessible copy made under these provisions may transfer it to: (a) a visually impaired person entitled to have the accessible copy so made²²; or (b) a person who has lawful possession of the master copy and intends to transfer the accessible copy to a person falling within head (a) above²³. The transfer by a person, 'V', of an accessible copy made under these provisions to another person, 'T', is an infringement of copyright by V unless V has reasonable grounds for believing that T is a person falling within either head (a) or head (b) above²⁴.

If an accessible copy which would be an infringing copy but for these provisions is subsequently dealt with²⁵, it is to be treated as an infringing copy for the purposes of that dealing²⁶; and if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes²⁷.

1 'Visually impaired person' means a person: (1) who is blind; (2) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light; (3) who is unable, through physical disability, to hold or manipulate a book; or (4) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading: Copyright, Designs and Patents Act 1988 s 31F(1), (9)(a)-(d) (s 31F added by the Copyright (Visually Impaired Persons) Act 2002 s 6).

2 For the meaning of 'copy' see PARA 314 ante.

3 For the meaning of 'literary work' see PARA 67 ante.

4 For the meaning of 'dramatic work' see PARA 73 ante.

5 For the meaning of 'musical work' see PARA 73 ante.

6 Copyright, Designs and Patents Act 1988 s 31A(1)(a) (s 31A added by the Copyright (Visually Impaired Persons) Act 2002 s 1). For the meaning of 'artistic work' see PARA 75 ante. As to the application of the Copyright, Designs and Patents Act 1988 ss 31A-31F (as added and amended) see PARA 337 ante.

7 Ibid s 31A(1)(b) (as added: see note 6 supra). For the meaning of 'published edition' see PARA 92 ante.

8 A copy of a copyright work (other than an accessible copy made under s 31A (as added) or s 31B (as added) (see PARA 344 post)) is to be taken to be accessible to a visually impaired person only if it is as accessible to him as it would be if he were not visually impaired: *ibid* s 31F(1), (2) (as added: see note 1 supra). For the meaning of 'copyright work' see PARA 57 ante.

'Accessible copy', in relation to a copyright work, means a version which provides for a visually impaired person improved access to the work: s 31F(1), (3) (as so added). An accessible copy may include facilities for navigating around the version of the copyright work but may not include: (1) changes that are not necessary to overcome problems caused by visual impairment; or (2) changes which infringe the right (provided by s 80: see PARA 463 et seq post) not to have the work subjected to derogatory treatment: s 31F(1), (4) (as so added).

9 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

10 Copyright, Designs and Patents Act 1988 s 31A(1) (as added: see note 6 supra).

11 For the meaning of 'performance' see PARA 324 ante.

12 Copyright, Designs and Patents Act 1988 s 31A(2)(a) (as added: see note 6 supra).

13 For the meaning of 'database' see PARA 731 post.

14 Copyright, Designs and Patents Act 1988 s 31A(2)(b) (as added: see note 6 supra). As to copyright in databases see PARA 730 et seq post.

15 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

16 Copyright, Designs and Patents Act 1988 s 31A(3) (as added: see note 6 supra).

17 Ibid s 31A(4)(a) (as added: see note 6 supra).

18 Ibid s 31A(4)(b) (as added: see note 6 supra). For the meaning of 'sufficient acknowledgement' see PARA 338 note 7 ante.

19 Ibid s 31A(5) (as added: see note 6 supra).

20 For the meaning of 'infringing copy' see PARA 335 ante.

21 Copyright, Designs and Patents Act 1988 s 31A(6) (as added: see note 6 supra). A specified person is one falling within s 31A(7)(b) (as added): see head (b) in the text.

22 Ibid s 31A(7)(a) (as added: see note 6 supra).

23 Ibid s 31A(7)(b) (as added: see note 6 supra).

24 Ibid s 31A(8) (as added: see note 6 supra).

25 'Dealt with' means sold or let for hire, or offered or exposed for sale or hire, or communicated to the public: *ibid* s 31A(10) (as added (see note 6 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 2 para 22(a)). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante. For the meaning of 'communication to the public' see PARA 326 ante.

26 Copyright, Designs and Patents Act 1988 s 31A(9)(a) (as added: see note 6 supra).

27 Ibid s 31A(9)(b) (as added: see note 6 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(iv) Visual Impairment/344. Multiple copies.

344. Multiple copies.

If an approved body¹ has lawful possession of a copy² ('the master copy') of the whole or part of a commercially published³ literary⁴, dramatic⁵, musical⁶ or artistic work⁷ or a commercially published edition⁸, it is not an infringement of copyright⁹ in the work, or in the typographical arrangement of the published edition, for the body to make, or supply¹⁰, accessible copies¹¹ for the personal use of visually impaired persons¹² to whom the master copy is not accessible¹³ because of their impairment¹⁴. This provision does not apply:

- 288 (1) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance¹⁵ of the work or part of it¹⁶;
- 289 (2) if the master copy is of a database¹⁷, or part of a database, and the making of an accessible copy would infringe copyright in the database¹⁸;
- 290 (3) in relation to the making of an accessible copy if, or to the extent that, copies of the copyright work¹⁹ are commercially available by or with the authority of the copyright owner²⁰ in a form that is accessible to the same or substantially the same degree²¹; or
- 291 (4) in relation to the supply of an accessible copy to a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available by or with the authority of the copyright owner in a form that is accessible to that person²².

An accessible copy made under these provisions must be accompanied by a statement that it is so made²³ and a sufficient acknowledgement²⁴; and if an approved body charges for supplying such a copy, the sum charged must not exceed the cost of making and supplying the copy²⁵. If the master copy is in copy-protected electronic²⁶ form, any accessible copy made of it must, so far as it is reasonably practicable to do so, incorporate the same, or equally effective, copy protection, unless the copyright owner agrees otherwise²⁷.

If an approved body continues to hold an accessible copy made under these provisions when it would no longer be entitled to make or supply such a copy thereunder, the copy is to be treated as an infringing copy²⁸. If an accessible copy which would be an infringing copy but for these provisions is subsequently dealt with²⁹, it is to be treated as an infringing copy for the purposes of that dealing³⁰; and if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes³¹.

The above provisions do not apply to the making of an accessible copy in a particular form if: (a) a licensing scheme operated by a licensing body³² is in force under which licences may be granted by the licensing body permitting the making and supply of copies of the copyright work in that form³³; (b) the scheme is not unreasonably restrictive³⁴; and (c) the scheme and any modification made to it have been notified to the Secretary of State³⁵ by the licensing body³⁶.

1 'Approved body' means an educational establishment or a body that is not conducted for profit: Copyright, Designs and Patents Act 1988 ss 31B(12), 31F(5) (s 31B added by the Copyright (Visually Impaired Persons) Act 2002 s 2; and the Copyright, Designs and Patents Act 1988 s 31F added by the Copyright (Visually Impaired Persons) Act 2002 s 6). An approved body making copies under the Copyright, Designs and Patents Act 1988 s 31B (as added) must, if it is an educational establishment, ensure that the copies will be used only for its

educational purposes: s 31B(7) (as so added). For the meaning of 'educational establishment' see PARA 190 ante.

2 For the meaning of 'copy' see PARA 314 ante.

3 For the meaning of 'commercial publication' see PARA 63 ante.

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'dramatic work' see PARA 73 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 Copyright, Designs and Patents Act 1988 s 31B(1)(a) (as added: see note 1 supra). As to the application of ss 31A-31F (as added and amended) see PARA 337 ante. For the meaning of 'artistic work' see PARA 75 ante.

8 Ibid s 31B(1)(b) (as added: see note 1 supra). For the meaning of 'published edition' see PARA 92 ante.

9 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

10 'Supplying' includes lending: Copyright, Designs and Patents Act 1988 s 31B(13) (as added: see note 1 supra). 'Lending', in relation to a copy, means making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned (s 31F(6) (as added: see note 1 supra)); and for these purposes, a loan is not to be treated as being for direct or indirect economic or commercial advantage if a charge is made for the loan which does not exceed the cost of making and supplying the copy (s 31F(7) (as so added)). The definition of 'lending' in s 18A (as added) (see PARA 323 ante) does not apply for the purposes of s 31B (as added) and s 31C (as added) (see PARA 345 post): s 31F(8) (as so added).

11 For the meaning of 'accessible copy' see PARA 343 note 8 ante.

12 For the meaning of 'visually impaired person' see PARA 343 note 1 ante.

13 For the meaning of 'accessible' see PARA 343 note 8 ante.

14 Copyright, Designs and Patents Act 1988 s 31B(1) (as added: see note 1 supra).

15 For the meaning of 'performance' see PARA 324 ante.

16 Copyright, Designs and Patents Act 1988 s 31B(2)(a) (as added: see note 1 supra).

17 For the meaning of 'database' see PARA 731 post.

18 Copyright, Designs and Patents Act 1988 s 31B(2)(b) (as added: see note 1 supra).

19 For the meaning of 'copyright work' see PARA 57 ante.

20 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

21 Copyright, Designs and Patents Act 1988 s 31B(3) (as added: see note 1 supra).

22 Ibid s 31B(4) (as added: see note 1 supra).

23 Ibid s 31B(5)(a) (as added: see note 1 supra).

24 Ibid s 31B(5)(b) (as added: see note 1 supra). For the meaning of 'sufficient acknowledgement' see PARA 338 note 7 ante.

25 Ibid s 31B(6) (as added: see note 1 supra).

26 For the meaning of 'electronic' see PARA 184 note 2 ante.

27 Copyright, Designs and Patents Act 1988 s 31B(8) (as added: see note 1 supra).

28 Ibid s 31B(9) (as added: see note 1 supra). For the meaning of 'infringing copy' see PARA 335 ante.

29 'Dealt with' means sold or let for hire, or offered or exposed for sale or hire, or communicated to the public: ibid s 31B(11) (as added (see note 1 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 2 para 22(b)). As to the meaning of 'sell' see PARA 330 note 6

ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante. For the meaning of 'communication to the public' see PARA 326 ante.

30 Copyright, Designs and Patents Act 1988 s 31B(10)(a) (as added: see note 1 supra).

31 Ibid s 31B(10)(b) (as added: see note 1 supra).

32 For the meanings of 'licensing scheme' and 'licensing body' see PARA 224 ante.

33 Copyright, Designs and Patents Act 1988 s 31D(1)(a) (s 31D added by the Copyright (Visually Impaired Persons) Act 2002 s 4).

34 Copyright, Designs and Patents Act 1988 s 31D(1)(b) (as added: see note 33 supra). A scheme is unreasonably restrictive if it includes a term or condition which purports to prevent or limit the steps that may be taken under s 31B (as added) (see the text to notes 1-31 supra) or s 31C (as added) (see PARA 345 post), or has that effect: s 31D(2) (as so added). However, s 31D(2) (as added) does not apply if the copyright work is no longer published by or with the authority of the copyright owner and there are reasonable grounds for preventing or restricting the making of accessible copies of the work: s 31D(3) (as so added).

35 As to the Secretary of State see PARA 183 note 2 ante.

36 Copyright, Designs and Patents Act 1988 s 31D(1)(c) (as added: see note 33 supra). The Secretary of State may by regulations prescribe the form in which, or the procedure in accordance with which, any notice required under s 31D(1) (as added) must be given: s 31F(10) (as added: see note 1 supra). Any power to make regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 31F(11) (as so added). At the date at which this volume states the law no such regulations had been made.

If s 31B (as added) (see the text to notes 1-31 supra) or s 31C (as added) (see PARA 345 post) is displaced by a licensing scheme, s 119 (see PARA 226 ante), s 120 (see PARA 241 ante), s 121 (see PARA 245 ante) and s 122 (see PARA 248 ante) apply in relation to the scheme as if it were one to which those provisions applied as a result of s 117 (see PARA 223 ante): s 31D(4) (as so added).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(iv) Visual Impairment/345. Intermediate copies and records.

345. Intermediate copies and records.

An approved body¹ entitled to make accessible copies² may hold an intermediate copy³ of the master copy which is necessarily created during the production of the accessible copies, but only if and so long as the approved body continues to be entitled to make accessible copies of that master copy⁴ and for the purposes of the production of further accessible copies⁵. An intermediate copy which is held in breach of this provision is to be treated as an infringing copy⁶.

An approved body may lend⁷ or transfer the intermediate copy to another approved body which is entitled to make accessible copies⁸ of the work or published edition⁹. The loan or transfer by an approved body, 'A', of an intermediate copy to another person, 'B', is an infringement of copyright¹⁰ by A unless A has reasonable grounds for believing that B is another approved body which is so entitled to make accessible copies of the work or published edition¹¹, and will use the intermediate copy only for the purposes of the production of further accessible copies¹². If an approved body charges for lending or transferring the intermediate copy, the sum charged must not exceed the cost of the loan or transfer¹³.

In respect of these provisions, an approved body must: (1) keep records of accessible copies made and of the persons to whom they are supplied¹⁴; (2) keep records of any intermediate copy lent or transferred and of the persons to whom it is lent or transferred¹⁵; and (3) allow the copyright owner¹⁶ or a person acting for him, on giving reasonable notice, to inspect the records at any reasonable time¹⁷.

Within a reasonable time of making an accessible copy¹⁸, or lending or transferring an intermediate copy under these provisions, the approved body must notify each relevant representative body¹⁹ or, if there is no such body, notify the copyright owner²⁰.

1 For the meaning of 'approved body' see PARA 344 note 1 ante.

2 Ie under the Copyright, Designs and Patents Act 1988 s 31B (as added): see PARA 344 ante. For the meaning of 'accessible copy' see PARA 343 note 8 ante.

3 For the meaning of 'copy' see PARA 314 ante.

4 Copyright, Designs and Patents Act 1988 s 31C(1)(a) (s 31C added by the Copyright (Visually Impaired Persons) Act 2002 s 3). As to the application of the Copyright, Designs and Patents Act 1988 ss 31A-31F (as added and amended) see PARA 337 ante.

5 Ibid s 31C(1)(b) (as added: see note 4 supra).

6 Ibid s 31C(2) (as added: see note 4 supra). For the meaning of 'infringing copy' see PARA 335 ante.

7 For the meaning of 'lend' see PARA 344 note 10 ante.

8 Ie under the Copyright, Designs and Patents Act 1988 s 31B (as added): see PARA 344 ante.

9 Ibid s 31C(3) (as added: see note 4 supra). For the meaning of 'published edition' see PARA 92 ante.

10 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

11 Copyright, Designs and Patents Act 1988 s 31C(4)(a) (as added: see note 4 supra).

12 Ibid s 31C(4)(b) (as added: see note 4 supra).

13 Ibid s 31C(5) (as added: see note 4 supra).

14 Ibid s 31C(6)(a) (as added: see note 4 supra).

15 Ibid s 31C(6)(b) (as added: see note 4 supra).

16 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

17 Copyright, Designs and Patents Act 1988 s 31C(6)(c) (as added: see note 4 supra).

18 Ie under ibid s 31B (as added): see PARA 344 ante.

19 Ibid s 31C(7)(a) (as added: see note 4 supra). A 'relevant representative body' is a body which represents particular copyright owners, or owners of copyright in the type of copyright work concerned, and has given notice to the Secretary of State of the copyright owners, or the classes of copyright owner, represented by it: s 31C(8) (as so added). The Secretary of State may by regulations prescribe the form in which, or the procedure in accordance with which, any notice required under s 31C(7) or (8) (as added) must be given: s 31F(10) (s 31F added by the Copyright (Visually Impaired Persons) Act 2002 s 6). Any power to make regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Copyright, Designs and Patents Act 1988 s 31F(11) (as so added). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 183 note 2 ante.

20 Ibid s 31C(7)(b) (as added: see note 4 supra). See also note 19 supra. The requirement to notify the copyright owner does not apply if it is not reasonably possible for the approved body to ascertain the name and address of the copyright owner: s 31C(9) (as so added).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(iv) Visual Impairment/346. Limitations following infringement of copyright.

346. Limitations following infringement of copyright.

The Secretary of State¹ may make an order² if it appears to him that the making of copies under the provisions relating to the making of multiple copies³, or under a licence granted under a licensing scheme⁴, has led to infringement of copyright⁵ on a scale which, in the Secretary of State's opinion, would not have occurred if the multiple copying provisions⁶ had not been in force, or the licence had not been granted⁷. The order may:

- 292 (1) prohibit one or more named approved bodies⁸, or one or more specified categories of approved body, from acting under the multiple copying provisions⁹ or acting under a licence of a description specified in the order¹⁰;
- 293 (2) disapply the multiple copying provisions¹¹, or the provisions of a licence, or a licensing scheme, of a description specified in the order¹², in respect of the making of copies of a description so specified¹³.

If the Secretary of State proposes to make an order he must, before making it, consult such bodies representing copyright owners¹⁴ as he thinks fit¹⁵, and such bodies representing visually impaired persons¹⁶ as he thinks fit¹⁷. If the Secretary of State proposes to make an order which includes a prohibition he must, before making it, consult: (a) if the proposed order is to apply to one or more named approved bodies, that body or those bodies¹⁸; (b) if it is to apply to one or more specified categories of approved body, such bodies representing approved bodies of that category or those categories as he thinks fit¹⁹.

An approved body which is prohibited by an order from acting under a licence may not apply to the Copyright Tribunal²⁰ in respect of a refusal or failure by a licensing body²¹ to grant such a licence²².

1 As to the Secretary of State see PARA 183 note 2 ante.

2 Any power to make orders is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Copyright, Designs and Patents Act 1988 s 31F(11) (added by the Copyright (Visually Impaired Persons) Act 2002 s 6). At the date at which this volume states the law no such order had been made.

3 I.e. under the Copyright, Designs and Patents Act 1988 s 31B (as added): see PARA 344 ante.

4 I.e. a licence granted under a licensing scheme that has been notified under *ibid* s 31D (as added): see PARA 344 ante. For the meaning of 'licensing scheme' see PARA 224 ante.

5 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

6 I.e. the Copyright, Designs and Patents Act 1988 s 31B (as added): see PARA 344 ante.

7 *Ibid* s 31E(1) (s 31E added by the Copyright (Visually Impaired Persons) Act 2002 s 5). As to the application of the Copyright, Designs and Patents Act 1988 ss 31A-31F (as added and amended) see PARA 337 ante.

8 For the meaning of 'approved body' see PARA 344 note 1 ante.

9 Copyright, Designs and Patents Act 1988 s 31E(2)(a) (as added: see note 7 supra).

10 *Ibid* s 31E(2)(b) (as added: see note 7 supra).

- 11 Ibid s 31E(3)(a) (as added: see note 7 supra).
- 12 Ibid s 31E(3)(b) (as added: see note 7 supra).
- 13 Ibid s 31E(3) (as added: see note 7 supra).
- 14 As to who is the owner of the copyright in a work see PARA 118 et seq ante.
- 15 Copyright, Designs and Patents Act 1988 s 31E(4)(a) (as added: see note 7 supra).
- 16 For the meaning of 'visually impaired person' see PARA 343 note 1 ante.
- 17 Copyright, Designs and Patents Act 1988 s 31E(4)(b) (as added: see note 7 supra).
- 18 Ibid s 31E(5)(a) (as added: see note 7 supra).
- 19 Ibid s 31E(5)(b) (as added: see note 7 supra).
- 20 Ie under ibid s 121(1): see PARA 245 ante.
- 21 For the meaning of 'licensing body' see PARA 224 ante.
- 22 Copyright, Designs and Patents Act 1988 s 31E(6) (as added: see note 7 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(v) Education/347. Things done for purposes of instruction or examination.

(v) Education

347. Things done for purposes of instruction or examination.

Copyright¹ in a literary², dramatic³, musical⁴ or artistic⁵ work is not infringed⁶ by its being copied⁷ in the course of instruction or of preparation for instruction, provided the copying:

- 294 (1) is done by a person giving or receiving instruction⁸;
- 295 (2) is not done by means of a reprographic process⁹; and
- 296 (3) is accompanied by a sufficient acknowledgement¹⁰,

and provided that the instruction is for a non-commercial purpose¹¹.

Copyright in a sound recording¹², film¹³ or broadcast¹⁴ is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying:

- 297 (a) is done by a person giving or receiving instruction¹⁵; and
- 298 (b) is accompanied by a sufficient acknowledgement¹⁶,

and provided that the instruction is for a non-commercial purpose¹⁷.

Copyright in a literary, dramatic, musical or artistic work which has been made available to the public¹⁸ is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying: (i) is fair dealing with the work¹⁹; (ii) is done by a person giving or receiving instruction²⁰; (iii) is not done by means of a reprographic process²¹; and (iv) is accompanied by a sufficient acknowledgement²².

Copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions, provided that the questions are accompanied by a sufficient acknowledgement²³; but this provision does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work²⁴.

Where a copy which would otherwise be an infringing copy²⁵ is made in accordance with the above provisions but is subsequently dealt with²⁶, it is to be treated as an infringing copy for the purpose of that dealing, and, if that dealing infringes copyright, for all subsequent purposes²⁷.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 As to infringement of copyright see PARA 311 et seq ante.

7 For the meaning of 'copy' see PARA 314 ante.

8 Copyright, Designs and Patents Act 1988 s 32(1)(a) (s 32(1), (2) substituted, and s 32(2A), (2B) added, by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 11(1)(a)). As to the application of the Copyright, Designs and Patents Act 1988 s 32 (as amended) see PARA 337 ante.

9 Ibid s 32(1)(b) (as substituted: see note 8 supra). For the meaning of 'reprographic process' see PARA 184 note 2 ante.

10 Ibid s 32(1)(c) (as substituted: see note 8 supra). For the meaning of 'sufficient acknowledgement' see PARA 338 note 7 ante. No such acknowledgement is required where this would be impossible for reasons of practicality or otherwise: s 32(3A) (added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 11(1)(c)).

11 Copyright, Designs and Patents Act 1988 s 32(1) (as substituted: see note 8 supra).

12 For the meaning of 'sound recording' see PARA 84 ante.

13 For the meaning of 'film' see PARA 86 ante.

14 For the meaning of 'broadcast' see PARA 89 ante.

15 Copyright, Designs and Patents Act 1988 s 32(2)(a) (as substituted: see note 8 supra).

16 Ibid s 32(2)(b) (as substituted: see note 8 supra). No such acknowledgement is required where this would be impossible for reasons of practicality or otherwise: s 32(3A) (as added: see note 10 supra).

17 Ibid s 32(2) (as substituted: see note 8 supra).

18 The provisions of ibid s 30(1A) (as added) (works made available to the public: see PARA 339 ante) apply for the purposes of s 32(2A) (as added) as they apply for the purposes of s 30(1) (as amended) (see PARA 339 ante); s 32(2B) (as added: see note 8 supra).

19 Ibid s 32(2A)(a) (as added: see note 8 supra). As to fair dealing generally see PARA 340 ante.

20 Ibid s 32(2A)(b) (as added: see note 8 supra).

21 Ibid s 32(2A)(c) (as added: see note 8 supra).

22 Ibid s 32(2A)(d) (as added: see note 8 supra). No such acknowledgement is required where this would be impossible for reasons of practicality or otherwise: s 32(3A) (as added: see note 10 supra).

23 Ibid s 32(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 11(1)(b)). No acknowledgement is required in connection with anything done for the purposes mentioned in the Copyright, Designs and Patents Act 1988 s 32(3) (as amended) where this would be impossible for reasons of practicality or otherwise: s 32(3A) (as added: see note 10 supra).

24 Ibid s 32(4).

25 For the meaning of 'infringing copy' see PARA 335 ante.

26 For this purpose, 'dealt with' means sold or let for hire, offered or exposed for sale or hire, or communicated to the public (unless that communication, by virtue of the Copyright, Designs and Patents Act 1988 s 32(3) (as amended) (see the text to note 23 supra) is not an infringement of copyright): s 32(5) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 11(1)(d)). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante. For the meaning of 'communication to the public' see PARA 326 ante.

27 Copyright, Designs and Patents Act 1988 s 32(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(v) Education/348. Anthologies for educational use.

348. Anthologies for educational use.

The inclusion of a short passage from a published¹ literary² or dramatic³ work in a collection which:

- 299 (1) is intended for use in educational establishments⁴ and is so described in its title, and in any advertisements issued by or on behalf of the publisher⁵; and
- 300 (2) consists mainly of material in which no copyright subsists⁶,

does not infringe the copyright⁷ in the work if the work itself is not intended for use in such establishments and the inclusion is accompanied by a sufficient acknowledgment⁸.

The above provisions do not authorise the inclusion of more than two excerpts from copyright works⁹ by the same author¹⁰ in collections published by the same publisher over any period of five years¹¹.

1 For the meaning of 'published' see PARA 63 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For these purposes, references to the use of a work in an educational establishment are references to any use for the educational purposes of such an establishment: Copyright, Designs and Patents Act 1988 s 33(4). For the meaning of 'educational establishment' see PARA 190 ante.

5 Ibid s 33(1)(a). For the meaning of 'publisher' see PARA 63 ante.

6 Ibid s 33(1)(b). For the meaning of 'copyright' see PARA 57 ante. As to subsistence of copyright see PARA 54 et seq ante; and as to duration of copyright see PARA 93 et seq ante.

7 As to infringement of copyright see PARA 311 et seq ante.

8 Copyright, Designs and Patents Act 1988 s 33(1). As to the application of s 33 see PARA 337 ante. For the meaning of 'sufficient acknowledgement' see PARA 338 note 7 ante.

9 For the meaning of 'copyright work' see PARA 57 ante.

10 For these purposes, in relation to any given passage, the reference to excerpts from works by the same author: (1) is to be taken to include excerpts from works by him in collaboration with another; and (2) if the passage in question is from such a work, is to be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another: Copyright, Designs and Patents Act 1988 s 33(3). For the meaning of 'author' see PARA 110 ante.

11 Ibid s 33(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(v) Education/349. Performing, playing or showing work in course of activities of educational establishment.

349. Performing, playing or showing work in course of activities of educational establishment.

The performance¹ of a literary², dramatic³ or musical⁴ work before an audience consisting of teachers⁵ and pupils⁶ at an educational establishment⁷ and other persons directly connected with the activities of the establishment⁸:

- 301 (1) by a teacher or pupil in the course of the activities of the establishment⁹; or
- 302 (2) at the establishment by any person for the purposes of instruction¹⁰,

is not a public performance for the purposes of infringement of copyright¹¹.

The playing or showing of a sound recording¹², film¹³ or broadcast¹⁴ before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright¹⁵.

1 For the meaning of 'performance' see PARA 324 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'teacher' see PARA 190 note 7 ante.

6 For the meaning of 'pupil' see PARA 190 note 7 ante.

7 For the meaning of 'educational establishment' see PARA 190 ante.

8 For these purposes, a person is not directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment: Copyright, Designs and Patents Act 1988 s 34(3).

9 Ibid s 34(1)(a). As to the application of s 34 (as amended) see PARA 337 ante.

10 Ibid s 34(1)(b).

11 Ibid s 34(1). For the meaning of 'copyright' see PARA 57 ante; and as to infringement by performance in public see PARA 324 ante.

12 For the meaning of 'sound recording' see PARA 84 ante.

13 For the meaning of 'film' see PARA 86 ante.

14 For the meaning of 'broadcast' see PARA 89 ante.

15 Copyright, Designs and Patents Act 1988 s 34(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(1)(f)). As to infringement of copyright by playing or showing a sound recording, film or broadcast in public see PARA 324 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(v) Education/350. Recording by educational establishments of broadcasts.

350. Recording by educational establishments of broadcasts.

A recording of a broadcast¹, or a copy² of such a recording, may be made by or on behalf of an educational establishment³ for the educational purposes of that establishment without thereby infringing the copyright⁴ in the broadcast, or in any work included in it, provided that it is accompanied by a sufficient acknowledgement⁵ of the broadcast and that the educational purposes are non-commercial⁶. Copyright is not infringed where a recording of a broadcast or a copy of such a recording, the making of which was by virtue of the above provision not an infringement of copyright, is communicated to the public⁷ by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment⁸.

These provisions do not apply if or to the extent that there is a licensing scheme certified⁹ for these purposes providing for the grant of licences¹⁰.

Where a copy which would otherwise be an infringing copy¹¹ is made in accordance with these provisions but is subsequently dealt with¹², it is to be treated as an infringing copy for the purposes of that dealing, and, if that dealing infringes copyright, for all subsequent purposes¹³.

1 For the meaning of 'broadcast' see PARA 89 ante.

2 For the meaning of 'copy' see PARA 314 ante.

3 For the meaning of 'educational establishment', and as to references to anything done 'on behalf of' an educational establishment, see PARA 190 ante.

4 For the meaning of 'copyright' see PARA 57 ante. As to this type of infringement see PARA 314 ante.

5 For the meaning of 'sufficient acknowledgement' see PARA 338 note 7 ante.

6 Copyright, Designs and Patents Act 1988 s 35(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 2(2), 3, 12(1)(a), Sch 2). As to the application of the Copyright, Designs and Patents Act 1988 s 35 (as amended) see PARA 337 ante. Section 35 (as amended) also applies in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment: Copyright (Application of Provisions relating to Educational Establishments to Teachers) (No 2) Order 1989, SI 1989/1067, art 2 (amended by SI 2003/2498). For the meanings of 'teacher' and 'pupil' see PARA 190 note 7 ante.

7 For the meaning of 'communication to the public' see PARA 326 ante.

8 Copyright, Designs and Patents Act 1988 s 35(1A) (added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 12(1)(b)).

9 I.e. certified under the Copyright, Designs and Patents Act 1988 s 143: see PARA 183 ante. For the meaning of 'licensing scheme' see PARA 224 ante.

10 Ibid s 35(2).

11 For the meaning of 'infringing copy' see PARA 335 ante.

12 For this purpose, 'dealt with' means sold or let for hire, offered or exposed for sale or hire, or communicated from within the premises of an educational establishment to any person situated outside those premises: Copyright, Designs and Patents Act 1988 s 35(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 12(1)(c)). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante.

13 Copyright, Designs and Patents Act 1988 s 35(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(v) Education/351. Reprographic copying by educational establishments of passages from published works.

351. Reprographic copying by educational establishments of passages from published works.

Reprographic copies¹ of passages from published² literary³, dramatic⁴ or musical⁵ works may, to the extent permitted by these provisions, be made by or on behalf of an educational establishment⁶ for the purposes of instruction without infringing any copyright⁷ in the work, provided that they are accompanied by a sufficient acknowledgement⁸ and the instruction is for a non-commercial purpose⁹. Reprographic copies of passages from published editions¹⁰ may, to the extent permitted by these provisions, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the typographical arrangement of the edition¹¹.

Not more than 1 per cent of any work may be copied by or on behalf of an establishment by virtue of these provisions in any quarter, that is, in any period 1 January to 31 March, 1 April to 30 June, 1 July to 30 September, or 1 October to 31 December¹².

Copying is not authorised by these provisions if, or to the extent that, licences are available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact¹³. The terms of a licence granted to an educational establishment authorising the reprographic copying for the purposes of instruction of passages from published works are of no effect, so far as they purport to restrict the proportion of a work which may be copied, whether on payment or free of charge, to less than that which would be permitted under these provisions¹⁴.

Where a copy which would otherwise be an infringing copy¹⁵ is made in accordance with these provisions but is subsequently dealt with¹⁶, it is to be treated as an infringing copy for the purposes of that dealing, and, if that dealing infringes copyright, for all subsequent purposes¹⁷.

1 For the meaning of 'reprographic copy' see PARA 184 note 2 ante.

2 For the meaning of 'published' see PARA 63 ante.

3 For the meaning of 'literary work' see PARA 67 ante.

4 For the meaning of 'dramatic work' see PARA 73 ante.

5 For the meaning of 'musical work' see PARA 73 ante.

6 For the meaning of 'educational establishment', and as to references to anything done 'on behalf of' an educational establishment, see PARA 190 ante.

7 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

8 No acknowledgement is required in connection with the making of copies where this would be impossible for reasons of practicality or otherwise: Copyright, Designs and Patents Act 1988 s 36(1A) (s 36(1A), (1B) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 13(b)). For the meaning of 'sufficient acknowledgement' see PARA 338 note 7 ante.

9 Copyright, Designs and Patents Act 1988 s 36(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 13(a)). As to the application of the Copyright, Designs and Patents Act 1988 s 36 (as amended) see PARA 337 ante. Section 36 (as amended) also applies in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment: Copyright (Application of Provisions relating to Educational Establishments to

Teachers) (No 2) Order 1989, SI 1989/1067, art 2 (amended by SI 2003/2498). For the meanings of 'teacher' and 'pupil' see PARA 190 note 7 ante.

10 For the meaning of 'published edition' see PARA 92 ante.

11 Copyright, Designs and Patents Act 1988 s 36(1B) (as added: see note 8 supra).

12 Ibid s 36(2).

13 Ibid s 36(3). As to licensing see PARA 182 et seq ante.

14 Ibid s 36(4) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).

15 For the meaning of 'infringing copy' see PARA 335 ante.

16 For this purpose, 'dealt with' means sold or let for hire, offered or exposed for sale or hire, or communicated to the public: Copyright, Designs and Patents Act 1988 s 36(5) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 13(c)). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante. For the meaning of 'communication to the public' see PARA 326 ante.

17 Copyright, Designs and Patents Act 1988 s 36(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(v) Education/352. Lending of copies by educational establishments.

352. Lending of copies by educational establishments.

Copyright¹ in a work is not infringed by the lending² of copies³ of the work by an educational establishment⁴.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'lending', and as to the infringement of copyright by lending, see PARA 323 ante.

3 For the meaning of 'copies' see PARA 314 ante.

4 Copyright, Designs and Patents Act 1988 s 36A (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 11(1), 26(1)). As to the application of the Copyright, Designs and Patents Act 1988 s 36A (as added) see PARA 337 ante. For the meaning of 'educational establishment' see PARA 190 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/353. In general.

(vi) Libraries and Archives

353. In general.

The Copyright, Designs and Patents Act 1988 contains provisions permitting the following acts in respect of prescribed libraries and archives:

- 303 (1) the copying by librarians of articles in periodicals¹;
- 304 (2) the copying by librarians of parts of published works²;
- 305 (3) the lending of copies by libraries or archives³;
- 306 (4) the supply by librarians of copies of articles and works to other libraries⁴;
- 307 (5) the supply by librarians and archivists of replacement copies of works⁵;
- 308 (6) the copying by librarians and archivists of certain unpublished works⁶.

Regulations may be made by the Secretary of State⁷ prescribing libraries and archives and the conditions subject to which copies⁸ of a work may be made⁹; and the regulations may make different provision for different descriptions of libraries or archives and for different purposes¹⁰. The regulations may provide that, where a librarian¹¹ or archivist¹² is required to be satisfied as to any matter before making or supplying a copy of a work:

- 309 (a) he may rely on a signed declaration as to that matter by the person requesting the copy, unless he is aware that it is false in a material particular¹³; and
- 310 (b) in such cases as may be prescribed, he must not make or supply a copy in the absence of a signed declaration in such form as may be prescribed¹⁴.

The regulations must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament¹⁵.

Regulations for the purposes of the provisions relating to copying articles¹⁶ or parts of published works¹⁷ must contain provision to the effect that a copy may be supplied only to a person satisfying the librarian that his requirement is not related to any similar requirement of another person¹⁸. Such regulations may provide:

- 311 (i) that requirements must be regarded as similar if the requirements are for copies of substantially the same material at substantially the same time and for substantially the same purpose¹⁹; and
- 312 (ii) that requirements of persons must be regarded as related if those persons receive instruction to which the material is relevant at the same time and place²⁰.

1 Ie the Copyright, Designs and Patents Act 1988 s 38 (as amended): see PARA 356 post.

2 Ie *ibid* s 39 (as amended): see PARA 357 post.

3 Ie *ibid* s 40A (as added): see PARA 358 post.

4 Ie *ibid* s 41: see PARA 359 post.

5 Ie *ibid* s 42: see PARA 360 post.

- 6 Ie *ibid* s 43 (as amended): see PARA 361 post.
- 7 As to the Secretary of State see PARA 183 note 2 ante.
- 8 For the meaning of 'copies' see PARA 314 ante.
- 9 See the Copyright, Designs and Patents Act 1988 s 37(1)(a), (b). The Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, have been made: see PARAS 354-361 post.
- 10 Copyright, Designs and Patents Act 1988 s 37(4).
- 11 References to the librarian include a person acting on his behalf: *ibid* s 37(6).
- 12 References to the archivist include a person acting on his behalf: *ibid* s 37(6).
- 13 *Ibid* s 37(2)(a).
- 14 *Ibid* s 37(2)(b).
- 15 *Ibid* s 37(5).
- 16 Ie for the purposes of *ibid* s 38 (as amended): see PARA 356 post.
- 17 Ie for the purposes of *ibid* s 39 (as amended): see PARA 357 post.
- 18 *Ibid* s 40(1). The Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, have been made: see PARAS 356-357 post.
- 19 Copyright, Designs and Patents Act 1988 s 40(2)(a).
- 20 *Ibid* s 40(2)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/354. Meaning of 'prescribed library'.

354. Meaning of 'prescribed library'.

References to a prescribed library in any of the provisions relating to copying by librarians and archivists¹ are references to a library of a description prescribed for the purposes of that provision by regulations made by the Secretary of State².

The following libraries are prescribed for the purposes of the provisions relating to the copying by librarians³ of articles in periodicals⁴ and parts of published works⁵:

- 313 (1) any library administered by a library authority⁶, in relation to England and Wales, a statutory library authority⁷, in relation to Scotland, and an Education and Library Board⁸, in relation to Northern Ireland⁹;
- 314 (2) the British Library, the National Library of Wales, the National Library of Scotland, the Bodleian Library, Oxford and the University Library, Cambridge¹⁰;
- 315 (3) any library of a school¹¹ and any library of a specified description¹² of educational establishment¹³;
- 316 (4) any parliamentary library or library administered as part of a government department, including a Northern Ireland department, or as part of the Scottish Administration or any library conducted for or administered by an agency which is administered by a Minister of the Crown¹⁴;
- 317 (5) any library administered by, in England and Wales, a local authority¹⁵, the Common Council of the City of London or the Council of the Isles of Scilly, or, in Scotland, by a local authority¹⁶, or by a district council¹⁷ in Northern Ireland¹⁸;
- 318 (6) any other library conducted for the purpose of facilitating or encouraging the study of bibliography, education, fine arts, history, languages, law, literature, medicine, music, philosophy, religion, science (including natural and social science) or technology, or administered by any establishment or organisation which is conducted wholly or mainly for such a purpose¹⁹,

provided that any library conducted for profit²⁰ is not a prescribed library for those purposes²¹.

For the purposes of the provisions relating to supplying copies to other libraries²², replacing copies of works²³ and supplying copies of certain unpublished works²⁴, all the libraries in the United Kingdom²⁵ are prescribed as libraries the librarians of which may make and supply copies of any material to which those provisions relate²⁶.

Any library specified in heads (1) to (6) above which is not conducted for profit, and any library outside the United Kingdom which is conducted wholly or mainly for the purpose of facilitating or encouraging the study of bibliography, education, fine arts, history, languages, law, literature, medicine, music, philosophy, religion, science (including natural and social science) or technology which is not conducted for profit, are prescribed for the purposes of the provisions relating to supplying copies to other libraries²⁷ and replacing copies of works²⁸ as libraries for which copies of any material to which those provisions relate may be made and supplied by the librarian of a prescribed library²⁹.

1 I.e. the Copyright, Designs and Patents Act 1988 ss 38-43 (as amended): see PARA 356-361 post.

2 Ibid s 37(1)(a). As to the Secretary of State see PARA 183 note 2 ante. As to the making of regulations see PARA 353 ante.

- 3 'The librarian' means the librarian of a prescribed library: Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 2.
- 4 le for the purposes of the Copyright, Designs and Patents Act 1988 s 38 (as amended): see PARA 356 post.
- 5 le for the purposes of ibid s 39 (as amended): see PARA 357 post.
- 6 le within the meaning of the Public Libraries and Museums Act 1964: see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 926.
- 7 le within the meaning of the Public Libraries (Scotland) Act 1955.
- 8 le within the meaning of the Education and Libraries (Northern Ireland) Order 1986, SI 1986/594.
- 9 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 3(1), Sch 1 Pt A para 1.
- 10 Ibid Sch 1 Pt A para 2.
- 11 le within the meaning of the Copyright, Designs and Patents Act 1988 s 174: see PARA 190 note 2 ante.
- 12 The Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212 (as amended) refer to a description specified under the Copyright, Designs and Patents Act 1988 s 174 in the Copyright (Educational Establishments) (No 2) Order 1989, SI 1989/1068, but this order has been revoked: see now the Copyright (Educational Establishments) Order 2005, SI 2005/223; and PARA 190 ante.
- 13 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, Sch 1 Pt A para 3.
- 14 Ibid Sch 1 Pt A para 4 (amended by SI 1999/1042).
- 15 le within the meaning of the Local Government Act 1972: see LOCAL GOVERNMENT vol 69 (2009) PARA 23.
- 16 le within the meaning of the Local Government (Scotland) Act 1973.
- 17 le established under the Local Government Act (Northern Ireland) 1972.
- 18 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, Sch 1 Pt A para 5.
- 19 Ibid Sch 1 Pt A para 6.
- 20 'Conducted for profit', in relation to a library, means a library which is established or conducted for profit or which forms part of, or is administered by, a body established or conducted for profit: ibid reg 3(5).
- 21 Ibid reg 3(1).
- 22 le for the purposes of the Copyright, Designs and Patents Act 1988 s 41: see PARA 359 post.
- 23 le for the purposes of ibid s 42: see PARA 360 post.
- 24 le for the purposes of ibid s 43 (as amended): see PARA 361 post.
- 25 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.
- 26 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 3(2).
- 27 le for the purposes of the Copyright, Designs and Patents Act 1988 s 41: see PARA 359 post.
- 28 le for the purposes of ibid s 42: see PARA 360 post.
- 29 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 3(3), Sch 1 Pt B.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/355. Meaning of 'prescribed archive'.

355. Meaning of 'prescribed archive'.

References to a prescribed archive in the provisions relating to copying by librarians and archivists¹ are references to an archive of a description prescribed for the purposes of those provisions by regulations made by the Secretary of State².

All archives in the United Kingdom³ are prescribed for the purposes of the provisions relating to supplying replacement copies of works⁴ and copies of certain unpublished works⁵ as archives which may make and supply copies of any material to which those provisions relate; and any archive within the United Kingdom which is not conducted for profit⁶ is prescribed for the purposes of the provisions relating to supplying replacement copies of works⁷ as an archive for which copies of any material to which those provisions relate may be made and supplied by the archivist⁸ of a prescribed archive⁹.

1 Ie the Copyright, Designs and Patents Act 1988 ss 38-43 (as amended): see PARA 356-361 post.

2 Ibid s 37(1)(a). As to the regulations made for these purposes see the text and notes 3-9 infra. As to the making of regulations see PARA 353 ante. As to the Secretary of State see PARA 183 note 2 ante.

3 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

4 Ie for the purposes of the Copyright, Designs and Patents Act 1988 s 42: see PARA 360 post.

5 Ie for the purposes of ibid s 43 (as amended): see PARA 361 post.

6 'Conducted for profit', in relation to an archive, means an archive which is established or conducted for profit or which forms part of, or is administered by, a body established or conducted for profit: Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 3(5).

7 Ie for the purposes of the Copyright, Designs and Patents Act 1988 s 42: see PARA 360 post.

8 'The archivist' means the archivist of a prescribed archive: Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 2.

9 Ibid reg 3(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/356. Articles in periodicals.

356. Articles in periodicals.

The librarian¹ of a prescribed library² may, if the prescribed conditions³ are complied with, make and supply a copy⁴ of an article⁵ in a periodical without infringing any copyright⁶ in the text, in any illustrations accompanying the text, or in the typographical arrangement⁷. The prescribed conditions must include the following:

- 319 (1) that copies are supplied only to persons satisfying the librarian that they require them for the purposes of research for a non-commercial purpose⁸, or private study⁹, and will not use them for any other purpose¹⁰;
- 320 (2) that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical¹¹;
- 321 (3) that persons to whom copies are supplied are required to pay for them a sum not less than the cost, including a contribution to the general expenses of the library, attributable to their production¹²;
- 322 (4) provision to the effect that a copy may be supplied only to a person satisfying the librarian that his requirement is not related to any similar requirement of another person¹³.

The prescribed conditions are:

- 323 (a) that no copy of any article or any part of a work may be supplied to the person requiring the same unless he satisfies the librarian¹⁴ that he requires the copy for purposes of research for a non-commercial purpose or private study and will not use it for any other purpose and that he has delivered to the librarian a declaration in writing, in relation to that article or part of a work, substantially in the prescribed form¹⁵ and signed in the manner therein indicated¹⁶;
- 324 (b) that the librarian is satisfied that the requirement of such person and that of any other person are not similar, that is to say, the requirements are not for copies of substantially the same article or part of a work at substantially the same time and for substantially the same purpose, and are not related, that is to say, he and that person do not receive instruction to which the article or part of the work is relevant at the same time and place¹⁷;
- 325 (c) that such person is not furnished, in the case of an article, with more than one copy of the article or more than one article contained in the same issue of a periodical, and, in the case of part of a published¹⁸ work, with more than one copy of the same material or with a copy of more than a reasonable proportion of any work¹⁹; and
- 326 (d) that such person is required to pay for the copy a sum not less than the cost, including a contribution to the general expenses of the library, attributable to its production²⁰.

Unless the librarian is aware that the signed declaration delivered to him is false in a material particular, he may rely on it as to the matter he is required to be satisfied on before making or supplying the copy²¹. Where a person requesting a copy makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy²² if

made by him, he is liable for infringement of copyright as if he had made the copy himself²³ and the copy is to be treated as an infringing copy²⁴.

1 As to references to 'the librarian' see PARA 353 note 11 ante.

2 For the meaning of 'prescribed library' see PARA 354 ante.

3 The conditions prescribed by regulations made by the Secretary of State: Copyright, Designs and Patents Act 1988 s 37(1)(b). As to such conditions see the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 4; and the text to notes 14-21 infra. As to the making of regulations see PARA 353 ante. As to the Secretary of State see PARA 183 note 2 ante.

4 For the meaning of 'copy' see PARA 314 ante.

5 'Article', in the context of an article in a periodical, includes an item of any description: Copyright, Designs and Patents Act 1988 s 178.

6 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

7 Copyright, Designs and Patents Act 1988 s 38(1). As to the application of s 38 (as amended) see PARA 337 ante.

8 Ibid s 38(2)(a)(i) (s 38(2)(a) substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 14(1)).

9 Copyright, Designs and Patents Act 1988 s 38(2)(a)(ii) (as substituted: see note 8 supra). For the meaning of 'private study' see PARA 338 note 9 ante.

10 Ibid s 38(2)(a) (as substituted: see note 8 supra).

11 Ibid s 38(2)(b).

12 Ibid s 38(2)(c).

13 Ibid s 40(1). As to matters in respect of which regulations under this head may also provide see s 40(2); and PARA 353 ante.

14 For the meaning of 'the librarian' in this context see PARA 354 note 3 ante.

15 For the prescribed form of declaration see the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 4(2), Sch 2 Form A (amended by SI 2003/2498).

16 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 4(1), (2)(a) (amended by SI 2003/2498).

17 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 4(1), (2)(b).

18 For the meaning of 'published' see PARA 63 ante.

19 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 4(1), 4(2)(c).

20 Ibid reg 4(1), 4(2)(d).

21 Ibid reg 4(1), 4(3).

22 For the meaning of 'infringing copy' see PARA 335 ante.

23 Copyright, Designs and Patents Act 1988 s 37(3)(a).

24 Ibid s 37(3)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/357. Parts of published works.

357. Parts of published works.

The librarian¹ of a prescribed library² may, if the prescribed conditions³ are complied with, make and supply from a published edition⁴ a copy⁵ of part of a literary⁶, dramatic⁷ or musical⁸ work, other than an article⁹ in a periodical, without infringing any copyright¹⁰ in the work, in any illustrations accompanying the work, or in the typographical arrangement¹¹. The prescribed conditions must include the following:

- 327 (1) that copies are supplied only to persons satisfying the librarian that they require them for the purposes of research for a non-commercial purpose¹², or private study¹³, and will not use them for any other purpose¹⁴;
- 328 (2) that no person is furnished with more than one copy of the same material or with a copy of more than a reasonable proportion of any work¹⁵;
- 329 (3) that persons to whom copies are supplied are required to pay for them a sum not less than the cost, including a contribution to the general expenses of the library, attributable to their production¹⁶; and
- 330 (4) provision to the effect that a copy may be supplied only to a person satisfying the librarian that his requirement is not related to any similar requirement of another person¹⁷.

The prescribed conditions are the same as those in respect of the supply of a copy of an article in a periodical¹⁸.

Where a person requesting a copy makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy¹⁹ if made by him, he is liable for infringement of copyright as if he had made the copy himself²⁰ and the copy is to be treated as an infringing copy²¹.

1 As to references to 'the librarian' see PARA 353 note 11 ante.

2 For the meaning of 'prescribed library' see PARA 354 ante.

3 The conditions prescribed by regulations made by the Secretary of State: Copyright, Designs and Patents Act 1988 s 37(1)(b). As to such conditions see the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 4; and the text to note 18 infra. As to the making of regulations see PARA 353 ante. As to the Secretary of State see PARA 183 note 2 ante.

4 For the meaning of 'published edition' see PARA 92 ante.

5 For the meaning of 'copy' see PARA 314 ante.

6 For the meaning of 'literary work' see PARA 67 ante.

7 For the meaning of 'dramatic' work' see PARA 73 ante.

8 For the meaning of 'musical work' see PARA 73 ante.

9 For the meaning of 'article' see PARA 356 note 5 ante.

10 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

11 Copyright, Designs and Patents Act 1988 s 39(1). As to the application of s 39 (as amended) see PARA 337 ante.

12 Ibid s 39(2)(a)(i) (s 39(2)(a) substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 14(1)).

13 Copyright, Designs and Patents Act 1988 s 39(2)(a)(ii) (as substituted: see note 12 supra). For the meaning of 'private study' see PARA 338 note 9 ante.

14 Ibid s 39(2)(a) (as substituted: see note 12 supra).

15 Ibid s 39(2)(b).

16 Ibid s 39(2)(c).

17 Ibid s 40(1). As to matters in respect of which regulations under this head may also provide see s 40(2); and PARA 353 ante.

18 See the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 4 (as amended); and PARA 356 ante.

19 For the meaning of 'infringing copy' see PARA 335 ante.

20 Copyright, Designs and Patents Act 1988 s 37(3)(a).

21 Ibid s 37(3)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358. Lending of copies by libraries or archives.

358. Lending of copies by libraries or archives.

Copyright¹ in a work of any description is not infringed by the lending² of a book by a public library³ if the book is within the public lending right scheme⁴. Nor is copyright in a work infringed by the lending of copies⁵ of the work by a prescribed library or archive⁶, other than a public library, which is not conducted for profit⁷.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'lending', and as to infringement of copyright by lending, see PARA 323 ante.

3 'Public library' means a library administered by or on behalf of: (1) in England and Wales, a library authority within the meaning of the Public Libraries and Museums Act 1964 (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 926); (2) in Scotland, a statutory library authority within the meaning of the Public Libraries (Scotland) Act 1955; (3) in Northern Ireland, an Education and Library Board within the meaning of the Education and Libraries (Northern Ireland) Order 1986, SI 1986/594: Copyright, Designs and Patents Act 1988 s 178 (definition added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 11(5)).

4 Copyright, Designs and Patents Act 1988 s 40A(1) (s 40A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 11(2)). As to the application of the Copyright, Designs and Patents Act 1988 s 40A (as added) see PARA 337 ante. 'The public lending right scheme' means the scheme in force under the Public Lending Right Act 1979 s 1 (as amended) (see LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS vol 28 (Reissue) PARA 442); and a book is within the public lending right scheme if it is a book within the meaning of the provisions of the scheme relating to eligibility, whether or not it is in fact eligible: Copyright, Designs and Patents Act 1988 s 40A(1)(a), (b) (as so added).

5 For the meaning of 'copies' see PARA 314 ante.

6 Until the making of regulations under the Copyright, Designs and Patents Act 1988 s 37 (see PARA 353 ante) for the purposes of s 40A(2) (as added), this reference to a prescribed library or archive is to be construed as a reference to any library or archive in the United Kingdom prescribed by the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 3, Sch 1 Pt A paras 2-6 (see PARA 354 ante): Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 35. For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

7 Copyright, Designs and Patents Act 1988 s 40A(2) (as added: see note 4 supra).

UPDATE

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NOTE 4--As to the public lending right scheme see PARAS 358A-358W.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358A. The Public Lending Right Act 1979 and the public lending right scheme.

358A. The Public Lending Right Act 1979 and the public lending right scheme.

The Public Lending Right Act 1979 provides that, in accordance with a scheme to be known as the public lending right scheme ('the scheme')¹, there is conferred on authors² a right, known as public lending right, to receive from time to time out of a central fund³ payment in respect of loans of their books⁴ to the public by local library authorities⁵ in the United Kingdom⁶. The 1979 Act came into force on 1 March 1980⁷. The classes, descriptions and categories of books in respect of which public lending right subsists, and the scales of payments to be made from the central fund in respect of it, are determined by or in accordance with the scheme⁸. Provision must be made by the scheme for the right:

- 331 (1) to be established by registration⁹;
- 332 (2) to be transmissible by assignment or assignation, by testamentary disposition or by operation of law as personal or movable property¹⁰;
- 333 (3) to be claimed by or on behalf of the person for the time being entitled¹¹; and
- 334 (4) to be renounced¹², either in whole or in part, and either temporarily or for all time, on notice being given to the Registrar of Public Lending Right¹³ to that effect¹⁴.

As soon as possible after 1 March 1980, a draft scheme was to be prepared and a copy of the draft laid before each House of Parliament¹⁵. The draft scheme was to be approved by a resolution of each House and brought into force (in the form of the draft) by means of an order in a statutory instrument, to be laid before Parliament after it was made¹⁶.

The scheme must be so framed as to make entitlement to public lending right dependent on, and its extent ascertainable by reference to, the number of occasions on which books are lent out from particular libraries¹⁷, to be specified by the scheme or identified in accordance with provision made by it¹⁸. The scheme may provide for requiring local library authorities:

- 335 (a) to give information as and when, and in the form in which, the registrar may call for it or the Secretary of State may direct, as to loans made by them to the public of books in respect of which public lending right subsists, or of other books; and
- 336 (b) to arrange for books to be numbered, or otherwise marked or coded, with a view to facilitating the maintenance of the register and the ascertainment and administration of public lending right¹⁹.

The scheme may²⁰ be varied from time to time by the Secretary of State, after consultation with representatives of authors and library authorities, and of others who appear to be likely to be affected by it²¹, and the variation may be brought into force by an order in a statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament²².

The Secretary of State must in each year prepare and lay before each House of Parliament a report on the working of the scheme²³.

The scheme came into force between 14 June 1982 and 1 July 1983²⁴ and has since been varied by statutory instrument on numerous occasions²⁵.

Subject to any provision made by the scheme, the duration of public lending right in respect of a book is from the date of the book's first publication (or, if later, the beginning of the year in

which application is made for it to be registered) until 70 years have elapsed since the end of the year in which the author died²⁶.

- 1 The scheme was originally to be prepared and brought into force by the then Secretary of State for Education and Science (see the Public Lending Right Act 1979 s 1(1) (as originally enacted)); and is now the responsibility of the Secretary of State for Culture, Media and Sport (formerly known as the Secretary of State for National Heritage) (see s 1(1) (amended by the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311, art 3(1), Sch 1 Pt I)). As to the Secretary of State see PARA 183 NOTE 2.
- 2 As to the meaning of 'author' see PARA 358E.
- 3 As to the central fund see PARA 358D.
- 4 As to eligible books see PARA 358F.
- 5 For these purposes, in England and Wales 'local library authority' means a library authority under the Public Libraries and Museums Act 1964 (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 926): Public Lending Right Act 1979 s 5(2).
- 6 Public Lending Right Act 1979 s 1(1) (as amended: see NOTE 1).
- 7 See the Public Lending Right Act 1979 s 5(3); and the Public Lending Right Act 1979 (Commencement) Order 1980, SI 1980/83.
- 8 Public Lending Right Act 1979 s 1(2). In preparing the scheme the then Secretary of State for Education and Science was to consult with representatives of authors and library authorities and of others who appeared likely to be affected by it: s 1(2) (as originally enacted).
- 9 Public Lending Right Act 1979 s 1(7)(a); and see PARA 358G et seq.
- 10 Public Lending Right Act 1979 s 1(7)(b); and see PARA 358K et seq.
- 11 Public Lending Right Act 1979 s 1(7)(c); and see PARA 358U.
- 12 See the Public Lending Right Act 1979 s 1(7)(d); and PARA 358O.
- 13 As to the registrar see PARA 358C.
- 14 Public Lending Right Act 1979 s 1(7).
- 15 See the Public Lending Right Act 1979 s 3(1) (as originally enacted).
- 16 See the Public Lending Right Act 1979 s 3(2) (as originally enacted). The order might provide for different provisions of the scheme to come into force on different dates: s 3(2); and see TEXT AND NOTE 24.
- 17 For this purpose, 'library': (1) means any one of a local library authority's collections of books held by that authority for the purpose of being borrowed by the public; and (2) includes any such collection which is taken about from place to place: Public Lending Right Act 1979 s 3(4).
- 18 Public Lending Right Act 1979 s 3(3).
- 19 Public Lending Right Act 1979 s 3(5) (s 3 amended by the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311, art 3(1), Sch 1 Pt I).
- 20 Ie subject to the provisions of the Public Lending Right Act 1979 and in particular to s 3(1)-(6) (as amended): s 3(7).
- 21 Ie such consultation as is mentioned in Public Lending Right Act 1979 s 1(2) (amended by the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311, art 3(1), Sch 1 Pt I): see NOTE 8.
- 22 Public Lending Right Act 1979 s 3(7) (as amended: see NOTE 19). The variation may comprise such incidental and transitional provisions as the Secretary of State thinks appropriate for the purposes of continuing the scheme as varied: s 3(7) (as so amended).
- 23 Public Lending Right Act 1979 s 3(8) (as amended: see NOTE 19).
- 24 See the Public Lending Right Scheme 1982 (Commencement) Order 1982, SI 1982/719, art 2.

25 See the Public Lending Right Scheme 1982 (Amendment) Orders 1983, SI 1983/480; 1984, SI 1984/1847; 1985, SI 1985/1581; 1986, SI 1986/2103; 1998, SI 1998/2103; 1999, SI 1999/420, SI 1999/3304; 2000, SI 2000/933, SI 2000/3319; 2001, SI 2001/3984; 2002, SI 2002/3123; 2003, SI 2003/3045; 2004, SI 2004/1258, SI 2004/3128; 2005, SI 2005/1519, SI 2005/3351; 2006, SI 2006/3294; the Public Lending Right Scheme 1982 (Amendment) (No 2) Order 1983, SI 1983/1688; the Public Lending Right Scheme 1982 (Commencement of Variations) Orders 1988, SI 1988/2070; 1989, SI 1989/2188; 1990, SI 1990/2360; 1991, SI 1991/2618; 1992, SI 1992/3049; 1993, SI 1993/3049; 1996, SI 1996/1338; 1996, SI 1996/3237; and 1997, SI 1997/1576; and the Insolvency (Amendment of Subordinate Legislation) Order 1986, SI 1986/2001. Amendments to the scheme made by those instruments are noted where relevant in PARA 358C et seq.

26 Public Lending Right Act 1979 s 1(6); Public Lending Right Scheme 1982 art 20 (amended by SI 1997/1576). The year for the purposes of this provision is the 'sampling year' for the purposes of the scheme: see the Public Lending Right Scheme 1982 art 20 (as so amended); and PARAS 358K, 358P NOTE 11. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358B. The rental right and lending right directive.

358B. The rental right and lending right directive.

The EC Council directive of 19 November 1992 on rental and lending right related to copyright in the field of intellectual property¹ requires member states to provide a right to authorise or prohibit the rental and lending of originals and copies of copyright works and other subject matter². 'Rental' means making available for use for a limited period of time and for direct or indirect economic or commercial advantage³; and 'lending' means making available for use for a limited period of time and not for direct or indirect economic or commercial advantage through establishments which are accessible to the public⁴. Member states may derogate from this right in respect of public lending provided that authors obtain a remuneration and they are free to determine the remuneration taking account of the state's cultural promotion objectives⁵. Certain categories of establishments may be exempted by member states from the payment of remuneration⁶. The directive applies in respect of all copyright works, performances, phonograms, broadcasts and first fixation of films which are, on 1 July 1994, protected in the field of copyright and related rights or on that date meet the criteria for protection under the provisions of the directive⁷. The right belongs, respectively, to the author in respect of the original and copies of his work, the performer, the phonogram producer and the producer of the first fixation of a film in respect of the original and copies of his film⁸. The right is an exclusive right to authorise or prohibit rental and lending and may be transferred, assigned or subject to the granting of contractual licences⁹. Where an author or performer has transferred or assigned his rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that author or performer retains the right to obtain an equitable remuneration for the rental; that right cannot be waived¹⁰. The administration of the right to obtain an equitable remuneration may be entrusted to collecting societies representing authors or performers, subject to regulation by member states¹¹. Member states are to bring into force laws regulations and administrative provisions to comply with the directive not later than 1 July 1994¹² save that member states may determine the date as from which the exclusive right to authorise or prohibit lending or rental is to apply and the date as from which the unwaivable right to an equitable remuneration concerning a phonogram or film is to apply, provided that, in both cases, the date is no later than 1 July 1997¹³. Provision is made for the directive not to have retrospective effect¹⁴.

The rental right and lending right directive has been implemented in the United Kingdom by the Copyright and Related Rights Regulations 1996, which came into force on 1 December 1996¹⁵. The 1996 regulations provide, inter alia, that copyright in a work of any description is not infringed by the lending of a book by a public library if the book is within the public lending right scheme¹⁶.

1 See EC Council Directive 92/100 (OJ L 346, 27.11.92, p 61) (amended by European Parliament and EC Council Directive 2006/116 (OJ L372, 27.12.2006, p 12) so as to extend the duration of copyright and related rights from the period of the author's life plus 50 years to the period of the author's life plus 70 years). As to copyright and intellectual property see generally the Copyright, Designs and Patents Act 1988; the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297; and PARA 93.

2 EC Council Directive 92/100 (OJ L 346, 27.11.92, p 61) art 1(1).

3 EC Council Directive 92/100 art 1(2).

4 EC Council Directive 92/100 art 1(3).

5 EC Council Directive 92/100 art 5(1).

6 EC Council Directive 92/100 art 5(3).

7 EC Council Directive 92/100 art 13(1).

8 EC Council Directive 92/100 art 2(1).

9 EC Council Directive 92/100 art 2(4). The holder of an exclusive rental right is entitled to prohibit copies of a film from being offered for rental in a member state, even where those copies for rental have been authorised within another member state: Case C-61/97 *Egmont Film A/S v Laserdisken* [1999] 1 All ER (EC) 366, ECJ.

10 EC Council Directive 92/100 (OJ L 346, 27.11.92, p 61) art 4(1), (2).

11 See EC Council Directive 92/100 art 4(3), (4).

12 EC Council Directive 92/100 art 15(1).

13 See EC Council Directive 92/100 art 13(5), (8).

14 See EC Council Directive 92/100 art 13(2), (4), (6). Article 13 also contains transitional arrangements. Cf, however, Sweeting 'Frustrated Windfall: Rental Rights, Lending Rights and Equitable Remuneration' (1997) 15 International Media Law 44.

15 See the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 1(2), 3.

16 See the Copyright, Designs and Patents Act 1988 s 40A(1) (s 40A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 11(2)). Nor is copyright in a work infringed by the lending of copies of the work by a prescribed library or archive, other than a public library, which is not conducted for profit: Copyright Designs and Patents Act 1988 s 40A(2) (as so added). A book is within the public lending right scheme for this purpose if it is a book within the meaning of the provisions of the scheme relating to eligibility, whether or not it is in fact eligible: s 40A(1)(a) (as so added). For these purposes, 'public library' means a library administered, in England and Wales, by a library authority within the meaning of the Public Libraries and Museums Act 1964 (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 926); Copyright Designs and Patents Act 1988 s 40A s 178 (definition added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 11(5)). As to the public lending right scheme see PARAS 358A, 358C et seq; and for the meaning of 'eligible book' see PARA 358F. For transitional provisions relating to the libraries and archives prescribed for these purposes see reg 35 (applying the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 3(1), Sch 1 Pt A paras 2-6); and PARA 354.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358C. The Registrar of Public Lending Right.

358C. The Registrar of Public Lending Right.

The Secretary of State¹ must appoint an officer to be known as the Registrar of Public Lending Right² who holds and vacates office as such in accordance with the terms of his appointment³. He may at any time resign his office by notice in writing addressed to the Secretary of State; and the Secretary of State may at any time remove a person from the office of registrar on the ground of incapacity or misbehaviour⁴.

There must be paid to the registrar out of money provided by Parliament such remuneration and allowances as the Secretary of State may determine with the approval of the Treasury⁵. In the case of any such holder of the office of registrar as may be determined by the Secretary of State with that approval, there must be paid out of money so provided such pension, allowance or gratuity to or in respect of him, or such contributions or payments towards provision of such a pension, allowance or gratuity, as may be so determined⁶.

The Registrar of Public Lending Right is a corporation sole by that name, with a corporate seal⁷. He is not to be regarded as the servant or agent of the Crown⁸.

The registrar may appoint such assistant registrars and staff as he thinks fit, subject to the approval of the Secretary of State as to their numbers; and their terms and conditions of service, and the remuneration and allowances payable to them, must be such as the registrar may determine⁹. The registrar may direct, in the case of persons so appointed by him:

- 337 (1) that there be paid to and in respect of them such pensions, allowances and gratuities as he may determine;
- 338 (2) that payments be made towards the provision for them of such pensions, allowances and gratuities as he may determine; and
- 339 (3) that schemes be provided and maintained (whether contributory or not) for the payment to and in respect of them of such pensions, allowances and gratuities as he may determine¹⁰.

Anything authorised or required¹¹ to be done by the registrar may be done by any assistant registrar or member of the registrar's staff who is authorised generally or specially in that behalf in writing by the registrar¹².

The registrar is charged with the duty of establishing and maintaining in accordance with the public lending right scheme a register showing the books¹³ in respect of which public lending right subsists and the persons entitled to the right in respect of any registered book¹⁴. In the case of any registered book, he must determine in accordance with the scheme the sums (if any) due by way of public lending right; and any sum so determined to be due is recoverable from the registrar as a debt due to the person for the time being entitled to that right in respect of the book¹⁵. He must, by means of payments out of the central fund, reimburse to local library authorities¹⁶ any expenditure incurred by them in giving effect to the scheme, the amount of that expenditure being ascertained in accordance with such calculations as the scheme may prescribe¹⁷.

The principal duties of the registrar under the scheme are to:

- 340 (a) establish and maintain a register of those books in respect of which the public lending right subsists and of those persons entitled to the right¹⁸;

- 341 (b) determine whether application is made in respect of an eligible book¹⁹;
- 342 (c) determine whether an applicant is an eligible person for the purposes of the scheme²⁰;
- 343 (d) determine issues relating to shares in a public lending right²¹;
- 344 (e) decide whether he is satisfied on applications for registration, or in respect of dealings in the right that an application is properly made²²;
- 345 (f) amend the register in appropriate circumstances as specified in the regulations²³;
- 346 (g) determine whether entries should be removed from the register²⁴;
- 347 (h) supply copies of register entries²⁵;
- 348 (i) determine the sums due and make payment to authors under the scheme²⁶;
- 349 (j) keep proper accounts and records and prepare in respect of each financial year statements of account to be submitted to the Comptroller and Auditor General who must examine and certify the statements and lay copies thereof, together with his report thereon, before Parliament²⁷;
- 350 (k) designate operative sampling points for the purposes of the scheme²⁸;
- 351 (l) reimburse local library authorities for the net expenditure incurred by them in giving effect to the scheme²⁹.

1 As to the Secretary of State see PARA 183 NOTE 2.

2 Public Lending Right Act 1979 s 1(3) (s 1, Schedule amended by the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311, art 3(1), Sch 1 Pt I).

3 Public Lending Right Act 1979 s 1(3), Schedule para 1 (as amended: see NOTE 2).

4 Public Lending Right Act 1979 Schedule para 1 (as amended: see NOTE 2).

5 Public Lending Right Act 1979 Schedule para 2(1) (as amended: see NOTE 2; further amended by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, art 2).

6 Public Lending Right Act 1979 Schedule para 2(2) (as amended: see NOTE 2). If, when a person ceases to hold office as registrar, it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, there may (with the approval of the Treasury) be paid to him out of the central fund a sum by way of compensation of such amount as may be so determined: Schedule para 2(3) (as so amended). As to the central fund see PARA 358D.

7 Public Lending Right Act 1979 Schedule para 5(1).

8 Public Lending Right Act 1979 Schedule para 5(2). He is disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 (Reprint No 15) s 1(1)(f), Sch 1 Pt III; and PARLIAMENT vol 78 (2010) PARA 908.

9 Public Lending Right Act 1979 Schedule para 7(1) (as amended: see NOTE 2). The approval of the Secretary of State and the Treasury is required for any determination or direction under these provisions by the registrar: Schedule para 7(4) (as amended: see NOTE 5).

10 Public Lending Right Act 1979 Schedule para 7(2). See also NOTE 9. Any money required for the payment of such remuneration and allowances, and of pensions, allowances and gratuities, and otherwise for these purposes, must be paid from the central fund: Schedule para 7(3).

11 He under the Public Lending Right Act 1979 (except under Schedule para 7 (as amended)) or under the public lending right scheme: Schedule para 8. As to the scheme see PARA 358E et seq.

12 Public Lending Right Act 1979 Schedule para 8. The Documentary Evidence Act 1868 has effect as if the registrar were included in the first column of the Schedule to that Act, as if the registrar and any person authorised to act on his behalf were mentioned in the second column of that Schedule, and as if the regulations referred to in that Act included any documents issued by the registrar or by any such person: Public Lending Right Act 1979 Schedule para 6.

13 As to the meaning of 'book' see PARA 358F.

14 Public Lending Right Act 1979 s 1(4).

15 Public Lending Right Act 1979 s 1(5).

16 For the meaning of 'local library authority' see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 926; and as to the application of this definition see PARA 358A NOTE 5.

17 Public Lending Right Act 1979 s 3(6).

18 See PARA 358G.

19 See PARA 358F.

20 See PARA 358E.

21 See PARA 358H.

22 See PARA 358I.

23 See PARA 358J.

24 See PARAS 358G, 358O.

25 See PARA 358G.

26 See PARA 358T.

27 See PARA 358D.

28 See PARA 358P.

29 See PARA 358P.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358D. The central fund.

358D. The central fund.

The central fund must be constituted by the Secretary of State¹ and placed under the control and management of the Registrar of Public Lending Right². There must be paid into the fund from time to time such sums, out of money provided by Parliament, as the Secretary of State with Treasury approval determines to be required for the purpose of satisfying the liabilities of the fund; but in respect of the liabilities of any one financial year³ of the fund the total of those sums must not exceed £5 million⁴ less the total of any sums paid in that year, out of money so provided, under the statutory provisions⁵ relating to the registrar's pay and pension and allied matters⁶.

There must be paid out of the central fund:

- 352 (1) such sums as may in accordance with the scheme be due from time to time in respect of public lending right⁷; and
- 353 (2) the administrative expenses of the registrar and any other expenses and outgoings mentioned in the Public Lending Right Act 1979 which are expressed to be payable from the fund⁸.

Money received by the registrar in respect of property disposed of, or otherwise in the course of his functions, or under the statutory provisions relating to public lending right⁹, must be paid into the central fund, except in such cases as the Secretary of State otherwise directs with the approval of the Treasury; and in any such case the money must be paid into the Consolidated Fund¹⁰.

The registrar must keep proper accounts and other records and must prepare in respect of each financial year of the fund statements of account in such form as the Secretary of State may direct with Treasury approval; and those statements must, on or before 31 August next following the end of that year, be transmitted to the Comptroller and Auditor General, who must examine and certify the statements and lay copies of them, together with his report on them, before each House of Parliament¹¹.

1 As to the Secretary of State see PARA 183 NOTE 2.

2 Public Lending Right Act 1979 s 2(1) (s 2 amended by the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311, art 3(1), Sch 1 Pt I).

3 'Financial year' means the 12 months ending 31 March: Interpretation Act 1978 s 5, Sch 1.

4 With the consent of the Treasury, the Secretary of State may from time to time by order in a statutory instrument increase the limit on the sums to be so paid in respect of financial years beginning after that in which the order is made; but no such order may be made unless a draft of it has been laid before the House of Commons and approved by a resolution of that House: Public Lending Right Act 1979 s 2(3) (as amended: see NOTE 2). In exercise of this power the Secretary of State has made the Public Lending Right (Increase of Limit) Order 2003, SI 2003/839, which increased the limit to the sum set out in the TEXT.

5 I.e. the Public Lending Right Act 1979 s 1(3), Schedule para 2 (as amended): see PARA 358C.

6 Public Lending Right Act 1979 s 2(2) (as amended: see NOTES 2, 4).

7 As to payment under the public lending right scheme see PARAS 358T-358V; and as to the establishment of the scheme see PARA 358A.

8 Public Lending Right Act 1979 s 2(4).

9 le the Public Lending Right Act 1979: see PARA 358A et seq, 358G et seq.

10 Public Lending Right Act 1979 s 2(5) (as amended: see NOTE 2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711.

11 Public Lending Right Act 1979 s 2(6) (as amended: see NOTE 2). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726. As to laying documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358E.
Eligible authors.

358E. Eligible authors.

A person is treated as an author of a book for the purpose of the public lending right scheme¹ if he is either:

- 354 (1) a writer of the book, including (without prejudice to the generality of that expression) (a) a translator and an editor or (b) a compiler of it, who in either case has contributed more than 10 per cent of the contents of the book or more than ten pages of the contents, whichever is the less, or who is entitled to a royalty payment from the publisher in respect of the book²; or
- 355 (2) an illustrator of it, which for this purpose includes the author of a photograph³.

Notwithstanding the above provisions, a person is not to be treated as an author of a book unless the fact that he is an author⁴:

- 356 (i) is evidenced by his being named on the title page of the book; or
- 357 (ii) is evidenced by his entitlement to a royalty payment from the publisher in respect of the book; or
- 358 (iii) in the case of a book without a title page, is evidenced either by his being named elsewhere in the book and in the view of the Registrar of Public Lending Right⁵ his contribution to the book was such that he would have merited a mention on the title page had there been one, or by his entitlement to a royalty payment from the publisher in respect of the book; or
- 359 (iv) is evidenced by a statement, signed by all the other authors of the book in respect of whom the fact that they are authors of the book is evidenced in accordance with heads (i) to (iii) above, that his contribution to the book was such that it is appropriate that he should be treated as an author of the book and the registrar is satisfied that it is appropriate so to treat him⁶.

For the purposes of the scheme, and in relation to each application⁷ by a person relating to an eligible book⁸, the applicant is an eligible person if he is an author of that book who at the date of the application has his only or principal home⁹ in one of the specified countries¹⁰ or, if he has no home, has been present in one of those countries for not less than 12 months out of the preceding 24 months¹¹. In relation to each application relating to a posthumously eligible book¹², an author who is dead is a posthumously eligible person if, had he been an applicant for first registration of public lending right in relation to that book at the date of his death, he would have been an eligible person¹³. If the author is not of full age, he may be an eligible person but in such a case application must be made by his parent or guardian¹⁴.

1 As to the establishment of the public lending right scheme see PARA 358A. For the meaning of 'book' see PARA 358F.

2 Public Lending Right Scheme 1982 (Commencement) Order 1982, SI 1982/719, art 2, Appendix, arts 2(1), 4(1)(a) (substituted by SI 1990/2360, Appendix; amended by SI 1991/2618, Appendix). The scheme may be cited as the Public Lending Right Scheme 1982 (art 2) and is so cited in this title, the citation being of the scheme as set out in SI 1990/2360 which incorporates all amendments in force on 27 December 1990; subsequent amendments only are noted. For a full list of all the amending instruments see PARA 358A NOTE 25.

- 3 Public Lending Right Scheme 1982 arts 2(1), 4(1)(b) (amended by SI 1997/1576).
- 4 le an author within the meaning of heads (1)-(2) in the TEXT: Public Lending Right Scheme 1982 art 2(1).
- 5 As to the registrar see PARA 358C.
- 6 Public Lending Right Scheme 1982 art 4(2) (amended by SI 1991/2618).
- 7 As to applications see PARA 358I.
- 8 For the meaning of 'eligible book' see PARA 358F.
- 9 'Principal home', in the case of a person having more than one home, means that one of those homes at which he has been for the longest aggregate period during the 24 months immediately preceding the application for registration: Public Lending Right Scheme 1982 art 5(2).
- 10 The specified countries are the Federal Republic of Germany and the United Kingdom: Public Lending Right Scheme 1982 art 5(1), Sch 5. For the meaning of 'United Kingdom' see PARA 3 NOTE 1.
- 11 Public Lending Right Scheme 1982 art 5(1).
- 12 For the meaning of 'posthumously eligible book' see PARA 358F.
- 13 Public Lending Right Scheme 1982 art 5A.
- 14 See the Public Lending Right Scheme 1982 art 17(3); and PARA 358I NOTE 4.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358F. Eligible books.

358F. Eligible books.

For the purposes of the public lending right scheme¹, an eligible book is a book the sole author², or at least one of the authors, of which is an eligible person³; and there must be treated as a separate book:

- 360 (1) each volume of a work published in two or more volumes; and
- 361 (2) each new edition of a book⁴.

'Book' means a printed and bound publication (including a paper-back edition) but does not include:

- 362 (a) a book bearing, in lieu of the name of an author who is a natural person, the name of a body corporate or an unincorporated association;
- 363 (b) a book which is wholly or mainly a musical score;
- 364 (c) a book the copyright of which is vested in the Crown;
- 365 (d) a book which has not been offered for sale to the public;
- 366 (e) a serial publication including, without prejudice to the generality of that expression, a newspaper, magazine, journal or periodical; or
- 367 (f) a book which does not have an international standard book number⁶.

A book is a posthumously eligible book for the purposes of the scheme if it is a book within the meaning of the above provision, the sole author, or at least one of the authors, of the book is a posthumously eligible person⁷, and the book is either:

- 368 (i) published within one year before or ten years after the date of that person's death and that person had made a successful application during his lifetime for registration of public lending right or of an eligible author's share of the right in respect of at least one other book; or
- 369 (ii) a book which consists of or incorporates a work of that person which had previously been the constituent of or incorporated in a book in relation to which that person had made such an application⁸.

1 As to the establishment of the scheme see PARA 358A.

2 For the meaning of 'author' see PARA 358E.

3 For the meaning of 'eligible person' see PARA 358E.

4 Public Lending Right Scheme 1982 art 6(1). As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

5 As to applications for registration see PARA 358I.

6 Public Lending Right Scheme 1982 art 6(2) (amended by SI 1999/420).

7 For the meaning of 'posthumously eligible person' see PARA 358E.

8 Public Lending Right Scheme 1982 art 6A.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358G. The register.

358G. The register.

The Registrar of Public Lending Right¹ must establish and maintain a public lending right register at such place as the Secretary of State² may from time to time determine, and upon each such determination notice must be published in the London Gazette, the Edinburgh Gazette and the Belfast Gazette, of that place and the time of the commencement of registration at it³. The register must be kept in the prescribed⁴ form, and must contain the prescribed particulars of books and their authors⁵.

The registrar must also keep at the registry an index⁶ whereby all entries in the register can readily be traced⁷.

No application for an entry in the register is to be entertained in the case of any book unless it falls within a class, description or category of books prescribed as one in respect of which public lending right subsists⁸.

The scheme must provide for the register to be conclusive both as to whether public lending right subsists in respect of a particular book and also as to the persons (if any) who are for the time being entitled to the right⁹. Provision must be included in the scheme for entries in the register to be made and amended, on application made in the prescribed manner and supported by prescribed particulars (verified as prescribed) so as to indicate in the case of any book who, if anyone, is for the time being entitled to public lending right in respect of it¹⁰.

The registrar may direct the removal from the register of every entry relating to a book in whose case no sum has become due by way of public lending right for a period of at least 10 years, but without prejudice to a subsequent application for the entries to be restored to the register¹¹.

The registrar may require the payment of fees, according to prescribed scales and rates, for supplying copies of entries in the register¹²; and a copy of an entry, certified under the hand of the registrar or an officer of his with authority in that behalf¹³ is admissible in evidence in all legal proceedings as of equal validity with the original¹⁴.

No public lending right in respect of a particular book subsists and no transmission of a registered interest is effective until the right or transmission has been entered in the register by the registrar¹⁵. Public lending right in respect of a book may, and may only, be registered if the book is an eligible book¹⁶ or a posthumously eligible book¹⁷ and, in either case, application in that behalf is made in the prescribed form and manner¹⁸.

1 As to the registrar see PARA 358C.

2 As to the Secretary of State see PARA 183 NOTE 2.

3 Public Lending Right Scheme 1982 art 7. The place at which the register is for the time being so maintained is known as 'the registry': see art 2(1). As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

4 'Prescribed' means prescribed by the scheme: Public Lending Right Act 1979 s 5(2).

5 Public Lending Right Act 1979 s 4(1). The register must contain: (1) particulars of each book in respect of which public lending right subsists, including (a) the title of the book; (b) the name or names of the persons appearing on the title page as the authors thereof; (c) the true identity of an author if different from head (b); (d) a number for that book determined by, or in accordance with arrangements made by, the registrar; and (2)

the name and address of each person entitled to the right in respect of each such book and, if more than one, the share of each such person in that right: Public Lending Right Scheme 1982 art 8(1). As to shares in the right see PARA 358H.

6 For this purpose 'index' includes any device or combination of devices serving the purpose of an index: Public Lending Right Act 1979 art 8(2).

7 Public Lending Right Act 1979 art 8(2).

8 Public Lending Right Act 1979 s 4(2).

9 Public Lending Right Act 1979 s 4(3); and see the Public Lending Right Scheme 1982 art 11.

10 Public Lending Right Act 1979 s 4(4). See PARA 358J.

11 Public Lending Right Act 1979 s 4(5). Where the registrar makes such a direction, any subsequent application for the entry to be restored to the register may be made only by the person who, at the date of the removal of the entry, was the registered owner, or by his legal personal representatives: Public Lending Right Scheme 1982 art 34. 'Registered owner' means the person for the time being shown on the register as the person to whom an interest in public lending right in respect of a particular book belongs: art 2(1).

12 Public Lending Right Act 1979 s 4(6). The registrar must not supply a copy of any entry in the register otherwise than to: (1) a registered owner, as regards any entry which relates to his registered interest; or (2) such other person as the registered owner may direct, but if the entry in question also relates to other registered owners, only with the consent of all such owners: Public Lending Right Scheme 1982 art 35(1). The registrar may require a payment of a fee for supplying a copy of an entry in the register, not exceeding £5 in respect of each such entry: art 35(2). 'Registered interest' means the interest (being the whole or a share thereof), in the public lending right in respect of a particular book, shown on the register as belonging to a particular person: art 2(1).

13 It is unnecessary to prove the registrar's authority: Public Lending Right Act 1979 s 4(6).

14 Public Lending Right Act 1979 s 4(6). As to offences connected with the register see PARA 358W.

15 Public Lending Right Scheme 1982 art 10.

16 For the meaning of 'eligible book' see PARA 358F.

17 For the meaning of 'posthumously eligible book' see PARA 358F.

18 Public Lending Right Scheme 1982 art 9(1). See further PARA 358I.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358H. Shares in public lending right.

358H. Shares in public lending right.

An eligible person's¹ registered share of public lending right in respect of a book of which he is author² is the whole of that right or, where a book has two or more authors (including any who are not eligible persons), such share of the public lending right as may be specified³ in the application for first registration of the right⁴.

A translator's share of public lending right in respect of a book is 30 per cent of that right, or if there is more than one translator (including any who are not eligible persons), an equal share of 30 per cent⁵.

An editor's or compiler's share of public lending right in respect of a book is:

- 370 (1) 20 per cent of that right; or
- 371 (2) if he satisfies the Registrar of Public Lending Right⁶ that he has contributed more than 20 per cent of the contents of the book, the percentage equal to that percentage contribution; or
- 372 (3) if there is more than one editor or compiler (including any who are not eligible persons), an equal share of 20 per cent or the higher percentage attributable to the editors or compilers in accordance with head (2) above⁷.

Each eligible person's share of public lending right in respect of a book with two or more authors (including any who are not eligible persons but disregarding a translator, editor or compiler), must not exceed 50 per cent of that right unless the registrar is satisfied that any share exceeding 50 per cent which is specified⁸ in the application for first registration of the right or in the application for first registration of an eligible author's share of the right⁹ is reasonable in relation to that author's contribution¹⁰.

Where a book has two or more authors (including any who are not eligible persons) and the registrar is satisfied that one or more of them is dead or cannot be traced at the date of application despite all reasonable steps having been taken to do so, the public lending right must be apportioned amongst all the authors (including any who are not eligible persons):

- 373 (a) by attributing to each author the same share of public lending right as has been attributed to that author in respect of any other book by the same authors or, if there is more than one such other book, the most recent book by those authors in respect of which public lending right has been registered, if the registrar is satisfied that there has been no significant change in the respective contributions of the authors¹¹;

- 374 (b) where head (a) above does not apply, equally, subject to:

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- 14. (i) the prior application of the provisions relating to translators, editors or compilers¹² and unless all the persons¹³ amongst whom the right would otherwise be apportioned equally jointly notify the registrar in writing that they wish the right to be apportioned in a manner other than equally, in which case the apportionment specified by them applies if the registrar is satisfied that it is reasonable in that case¹⁴; and

- 15. (ii) where the book is illustrated, the attribution of 20 per cent of the public lending right to the illustrator, or, if he satisfies the registrar that he has contributed

more than 20 per cent of the contents of the book, the attribution of the percentage equal to that percentage contribution, or if there is more than one illustrator (including any who are not eligible persons), the attribution of an equal share of 20 per cent or the higher percentage attributable to illustrators who have contributed more than 20 per cent of the contents¹⁵.

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Where head (b)(ii) above applies, an illustrator who is also an author of a book in another capacity is, in addition to any share of public lending right to which he is entitled under that provision, entitled to any further share of the right which is attributable to him as author in that other capacity¹⁶.

Where all the authors who are party to an application¹⁷ and who are entitled¹⁸ to a share of a percentage of public lending right in respect of the relevant book specify¹⁹ that that percentage is to be apportioned in a manner other than that provided for²⁰, the specified apportionment must apply if the registrar is satisfied that it is reasonable in that case²¹.

The following may, and may only, be registered on application in that behalf made in accordance with the prescribed procedure²²:

- 375 (A) an eligible author's share of the public lending right in respect of an eligible book with two or more authors (including any who are not eligible persons)²³;
- 376 (B) the share of the public lending right in such a book of an author who was not an eligible person at the time when application was first made for the registration of the share of the right of any co-author, if he has become and remains an eligible person²⁴;
- 377 (C) a posthumously eligible person's share of the public lending right in respect of a posthumously eligible book²⁵ with two or more authors (including any who are not eligible persons)²⁶.

1 For the meaning of 'eligible person' see PARA 358E.

2 For the meaning of 'author' and 'book' see PARAS 358E-358F.

3 I.e. in accordance with the Public Lending Right Scheme 1982 art 17(1)(c): see PARA 358I. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

4 Public Lending Right Scheme 1982 art 9A(1).

5 Public Lending Right Scheme 1982 art 9A(2). This provision does not apply where a translator is an author of the book in another capacity unless he makes an application in accordance with art 17(1)(c)(ii) (see PARA 358I): art 9A(2).

6 As to the registrar see PARA 358C.

7 Public Lending Right Scheme 1982 art 9A(3).

8 I.e. in accordance with Public Lending Right Scheme 1982 art 17(1)(c): see PARA 358I.

9 I.e. in accordance with Public Lending Right Scheme 1982 art 17(2): see PARA 358I.

10 Public Lending Right Scheme 1982 art 9A(4) (substituted by SI 1997/1576).

11 Public Lending Right Scheme 1982 art 9A(5)(a).

12 I.e. Public Lending Right Scheme 1982 arts 9A(2), (3): see TEXT AND NOTES 5-7.

13 I.e. including the personal representatives of a deceased eligible person: Public Lending Right Scheme 1982 art 9A(7). For the meaning of 'posthumously eligible person' see PARA 358E.

- 14 See the Public Lending Right Scheme 1982 art 9A(7), to which head (b) in the TEXT is expressed to be subject: art 9A(5)(b)(i).
- 15 Public Lending Right Scheme 1982 art 9A(5)(b)(ii).
- 16 Public Lending Right Scheme 1982 art 9A(6).
- 17 Ie under Public Lending Right Scheme 1982 art 17(1)(c): see PARA 358I.
- 18 Ie under Public Lending Right Scheme 1982 art 9A(2), (3), (5)(b)(ii) only: see the TEXT AND NOTES 5-7, 12-15.
- 19 See NOTE 8.
- 20 See NOTE 18.
- 21 Public Lending Right Scheme 1982 art 9A(8).
- 22 For the prescribed procedure see the Public Lending Right Scheme 1982 arts 14, 14A, 17, 17B; and PARA 358I.
- 23 Public Lending Right Scheme 1982 art 9(2).
- 24 Public Lending Right Scheme 1982 art 9(3).
- 25 For the meaning of 'posthumously eligible book' see PARA 358F.
- 26 Public Lending Right Scheme 1982 art 9(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358I. Procedure for registration.

358I. Procedure for registration.

An application for first registration of public lending right in respect of an eligible book¹:

- 378 (1) must satisfy the prescribed requirements² and be made by delivery at the registry³;
- 379 (2) must be made by an eligible author⁴; and
- 380 (3) where the book has two or more authors (including any who are not eligible persons⁵), must specify the shares of each of them⁶.

For the purpose of head (3) above, each of those authors who is alive at the date of application must be a party to the application, unless:

- 381 (a) the Registrar of Public Lending Right is satisfied that he cannot be traced, despite all reasonable steps having been taken to do so; or
- 382 (b) the application is made by the translator or editor or compiler of the book and he specifies that he is making the application only in his capacity as such;
- 383 (c) any author of the book who is not a party to the application is a translator and the application specifies that it relates only to that share of public lending right in the book to which the translator is not entitled; or
- 384 (d) the application is made by an author of the book and he specifies that he is making the application otherwise than wholly or partly in the capacity of translator, editor, or compiler of the book, and:

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- 16. (i) there is at the date of the application an effective agreement or arrangement between each person who is an author of the book (including any author who is not an eligible person or who does not wish to register);
- 17. (ii) each such person is a party to the agreement or arrangement otherwise than wholly or partly in the capacity of translator, editor or compiler of the book; and
- 18. (iii) the agreement or arrangement relates to the apportionment of shares of public lending right in the book or, where there is any eligible person who would be entitled to a share of the right by virtue of being a translator, editor, or compiler, to the apportionment of shares in such proportion of the right as would remain after taking account of any such entitlement⁷.

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An application for first registration of an eligible author's share of public lending right in respect of an eligible book with two or more authors (including any who are not eligible persons) must satisfy the prescribed requirements⁸ and be made by delivery at the registry, must be made by the author concerned, and must, when made by an author otherwise than wholly or partly in the capacity of translator, editor or compiler of the book, satisfy the requirements of head (d) above⁹.

An application for first registration of public lending right in respect of a posthumously eligible book¹⁰ and an application for first registration of a posthumously eligible person's¹¹ share of public lending right in respect of such a book with two or more authors (including any who are not eligible persons) must satisfy the prescribed requirements¹² and be made by delivery at the

registry, and must be made by the personal representatives of the posthumously eligible person concerned¹³.

The registrar must record the date upon which each application for first registration is received by him¹⁴.

The registrar may require the submission of evidence to satisfy him that:

- 385 (A) a book is an eligible book;
- 386 (B) a person applying as author for the first registration of public lending right, or the registration of a share of the right, is in fact the author of that book and is an eligible person;
- 387 (C) any co-author who is not a party to an application for first registration of public lending right is dead or cannot be traced despite all reasonable steps having been taken to do so; and
- 388 (D) where such an application as is mentioned in head (d) above has been made¹⁵, that there is such an agreement or arrangement as is mentioned in that head, and that the share of public lending right of the person making the application is as specified in that agreement or arrangement¹⁶.

For the purpose of obtaining any such evidence, the registrar may require a statutory declaration to be made by any person¹⁷.

When the registrar is satisfied as to the eligibility of a book for registration and as to the persons entitled to public lending right in respect of that book and, if more than one, of their respective shares therein, the registration must be completed and, as regards a first registration of the right, each registration is effective as from the day the application was recorded by the registrar as have been received by him¹⁸. On completion of a registration the registrar must issue, to any person so entered in the register as having an interest in the public lending right in respect of the book to which the entry relates, an acknowledgement of registration in the form of a copy of the relevant entry, indicating therein the date from which the entry takes effect¹⁹.

Where in the case of any application for first or any subsequent registration an applicant has failed to provide within three months information requested by the registrar, notice may be given to the applicant that the application will be treated as abandoned unless the information is duly furnished within a time (not being less than one month) determined by the registrar and specified in the notice; and if, at the expiration of that time, the information so requested is not furnished, the application may be treated as abandoned²⁰.

1 For the meaning of 'eligible book' see PARA 358F.

2 The requirements of the Public Lending Right Scheme 1982 art 14: art 17(1)(a). The application must be made in writing to the Registrar of Public Lending Right and must provide the information specified in art 14, Sch 1 Pt I (as amended) in such form as he may from time to time require: art 14. Each application must provide the registrar, in such form as he may from time to time require, with the following (Sch 1 Pt I paras 1-5) (Sch 1 para 2 substituted by SI 1991/2618):

- 17 (1) the title of the book to which the application relates;
- 18 (2) the name of every author (within the meaning of art 4: see PARA 358E) and the evidence on which each author relies for the purpose of being treated as an author in accordance with the Public Lending Right Scheme 1982 art 4(2) (as amended);
- 19 (3) the true identity (if different from head (2)) of each such person, and his address;
- 20 (4) the International Standard Book Number (if any) of the book; and

- 21 (5) a statement signed by each applicant that in each case the conditions as to eligibility specified in Pt II (arts 4-6A (as amended)) are satisfied at the date of application, accompanied, when the applicant has not previously made an application under art 17, by a certificate signed by a member of Parliament, justice of the peace, minister of religion, lawyer, bank officer, school teacher, police officer, doctor or other person accepted by the registrar as being of similar standing and stating that he has known the applicant for at least two years, that he is not related to the applicant and that to the best of his knowledge the contents of the statement by the applicant are true.

In the case of a work by more than one author, the application must provide a statement signed by all the authors who are alive and can be traced at the date of application specifying: (a) the agreed share in the public lending right of each author, and whether any author is translator, editor, compiler or, if any author is dead or untraced at the date of application, illustrator of the book and, if so, whether he is also an author of the book in another capacity; or (b) a statement by the applicant that he is translator, editor or compiler of the book and that his claim to the public lending right in respect thereof is limited to the percentage prescribed in art 9A(2) or (3) as the case may be (see PARA 358H); or (c) where one of the authors of the work is a translator, a statement signed by the other author or, if more than one, all the other authors who are alive and can be traced at the date of application specifying:

- 22 (i) that another author of the book who is not a party to the application is a translator;
- 23 (ii) that the claim to public lending right in respect thereof is limited to that share to which the translator is not entitled;
- 24 (iii) where there is more than one author other than the translator, the agreed share of each such author in that share of the public lending right to which the translator is not entitled, and whether any such author is editor or compiler or, if any such author is dead or untraced at the date of application, illustrator of the book and, if so, whether he is also an author of the book in another capacity; or

(d) where such an application as is mentioned in art 17(1)(c)(iv) is made in accordance with art 17(1) or (2), a statement specifying the names of all other persons whether or not party to such agreement or arrangement as is mentioned in art 17 (1)(c)(iv) who are eligible for a share of public lending right in respect of the book: Sch 1 para 6. Where an editor or compiler of a book wishes to claim, or claim an equal share of, more than 20% of the public lending right in accordance with art 9A(3), the application must provide particulars indicating evidence of the percentage that he has, or where there are two or more editors or compilers that they have jointly, contributed to the contents of the book: Sch 1 para 7. Finally, in the case of an author not of full age, the application must provide a declaration by the applicant that he is the parent or guardian, as the case may be, of the author, and a copy of the author's birth certificate: Sch 1 para 8.

As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2; and as to the Registrar of Public Lending Right see PARA 358C.

3 Public Lending Right Scheme 1982 art 17(1)(a). Unless the context otherwise requires, any requirement in the Public Lending Right Scheme 1982 for a document or an application to be delivered at the registry or produced to the registrar or for notice to be given to him, is satisfied if it is either delivered in person at the registry between the hours of 11 am and 3 pm on a working day or sent through the post by recorded delivery: art 3(a). As to the registry see PARA 358G NOTE 3.

4 Public Lending Right Scheme 1982 art 17(1)(b). For the meaning of 'eligible author' see PARA 358E. Anything which falls to be done by an author under art 17 must, if he is not of full age, be done by his parent or guardian and that parent or guardian must be recorded in the register as the person to whom are payable sums in respect of any registered interest of the author until such time as a transfer of the registration into the author's own name has been recorded in pursuance of art 25 (see PARA 358L): art 17(3).

5 For the meaning of 'eligible person' see PARA 358E.

6 Public Lending Right Scheme 1982 art 17(1)(c). As to shares in public lending right see PARA 358H.

7 Public Lending Right Scheme 1982 art 17(1)(c)(i)-(iv).

8 Ie the requirements of Public Lending Right Scheme 1982 art 14: see NOTE 2.

9 Public Lending Right Scheme 1982 art 17(2). For transitional provisions relating to translators, editors and compilers see art 17A.

10 For the meaning of 'posthumously eligible book' see PARA 358F.

11 For the meaning of 'posthumously eligible person' see PARA 358E.

12 le the requirements of the Public Lending Right Scheme 1982 art 14A: art 17B(a). An application under art 17B for first registration of public lending right, or of a posthumously eligible person's share of the right, in relation to a posthumously eligible book must be made in writing to the registrar and must provide in such form as he may from time to time require:

- 25 (1) the information specified in Sch 1 Pt I paras 1-4 (as amended) other than the address specified in Sch 1 Pt I para 4 (see NOTE 2) (art 14A(a));
- 26 (2) a statement signed by the personal representatives of the posthumously eligible person that the conditions as to eligibility specified in arts 5A, 6A (see PARAS 358E-358F) are satisfied (art 14A(b)); and
- 27 (3) in the case of a work by more than one author, a statement so signed that the posthumously eligible person in relation to whom the application is being made was translator, editor or compiler or illustrator of the book and that the claim to public lending right in respect thereof is limited to the percentage prescribed in art 9A(2), (3) or (5)(b)(ii) or that the other author, or one of the other authors, of the work is a translator and that the claim to public lending right in respect thereof is limited to that share or to a share of that share to which the translator is not entitled, and must be accompanied, when the personal representatives have not previously made an application under art 17B in relation to that posthumously eligible person, by (a) the probate, letters of administration or confirmation of executors of the posthumously eligible person in relation to whom the application is being made; and (b) a certificate signed by a member of Parliament, justice of the peace, minister of religion, lawyer, bank officer, school teacher, police officer, doctor or other person accepted by the registrar as being of similar standing and stating that he had known the posthumously eligible person in relation to whom the application is being made for at least two years before the date of his death, that he was not related to him and that to the best of his knowledge the contents of the statement referred to in head (2) are true (art 14A(c)).

13 Public Lending Right Scheme 1982 art 17B.

14 Public Lending Right Scheme 1982 art 15.

15 le in accordance with Public Lending Right Scheme 1982 art 17(1) or (2): see TEXT AND NOTES 1-9.

16 Public Lending Right Scheme 1982 art 18(a)-(d).

17 Public Lending Right Scheme 1982 art 18.

18 Public Lending Right Scheme 1982 art 16(1).

19 Public Lending Right Scheme 1982 art 16(2).

20 Public Lending Right Scheme 1982 art 33.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358J. Amendment of the register.

358J. Amendment of the register.

The register¹ may be amended pursuant to an order of a court of competent jurisdiction or by decision of the Registrar of Public Lending Right² in any of the following cases:

- 389 (1) in any case and at any time by consent of the registered owner³ or owners of the right in respect of a particular book⁴;
- 390 (2) where a court of competent jurisdiction or the registrar is satisfied that an entry in the register has been obtained by fraud;
- 391 (3) where a decision of a court of competent jurisdiction affects any interest in an eligible book⁵ and, in consequence thereof, the registrar is of the opinion that amendment of the register is required;
- 392 (4) where two or more persons are erroneously registered as being entitled to the same interest in public lending right in respect of a particular book;
- 393 (5) where an entry erroneously relates to a book which is not an eligible book;
- 394 (6) in any other case where by reason of any error or omission in the register, or by reason of any entry made under a mistake, it appears to the registrar just to amend the register⁶.

The person who, as a result of an amendment of the register⁷, becomes the registered owner of a registered interest is entitled to the payment of public lending right in respect of that interest from the date upon which the register was amended⁸.

1 As to the register see PARA 358G.

2 As to the registrar see PARA 358C.

3 For the meaning of 'registered owner' see PARA 358G NOTE 11.

4 For the meaning of 'book' see PARA 358F.

5 For the meaning of 'eligible book' see PARA 358F.

6 Public Lending Right Scheme 1982 art 12. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

7 I.e. pursuant to Public Lending Right Scheme 1982 art 12 (see TEXT AND NOTES 1-6) or art 17A (transitional provisions for translators, editors and compilers): art 13.

8 Public Lending Right Scheme 1982 art 13.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358K. In general.

358K. In general.

A registered interest¹ is transmissible by assignment or assignation, by testamentary disposition or by operation of law, as personal or movable property, so long, as regards a particular book², as the public lending right in respect of that book is capable of subsisting³. The duration of public lending right in respect of any book and the period during which there may be dealings therein is from the date of the book's first publication (or, if later, the beginning of the sampling year⁴ in which application is made for it to be registered) until 70 years have elapsed since the end of the sampling year in which the author⁵ died or, if the book is registered as the work of more than one author, as regards dealings in the share of the right⁶ attributable to that author, the end of the year in which that author died⁷.

The disposition of public lending right after the first registration of it must, as respects each registered interest in any book, be for the whole of that interest⁸. On such disposition the interest may be registered in the name of joint owners, being not more than four in number and all being of full age, but in such case the senior⁹ only is deemed, for the purposes of the public lending right scheme, to be the registered owner¹⁰. Subject to the provisions relating to bankruptcy and schemes of arrangement¹¹, no notice of any trusts (whether expressed, implied or constructive) may be entered on the register or are receivable by the registrar¹².

Every application for registration of a transfer of public lending right must satisfy the prescribed requirements¹³ and be made by delivery at the registry¹⁴. An application for transfer must bear the proper Inland Revenue stamp impressed thereon to show that all duty (if any) payable in respect of the transaction has been paid¹⁵. Where an application for transfer is submitted for the purpose of giving effect to a transaction under a deed or other instrument on which the Inland Revenue stamp has already been impressed, the stamped instrument must, before completion of the registration, be produced to the Registrar of Public Lending Right to show that all duty (if any) payable in respect of the transaction has been paid¹⁶.

It is a condition of registration of every transfer that the transferee provides, and gives an undertaking to the registrar in future to provide at such intervals and in such form as the registrar may require, evidence that the author is still alive, or, as the case may be, evidence of the author's death¹⁷. No transmission of a registered interest is effective until entered in the register by the registrar¹⁸.

1 For the meaning of 'registered interest' see PARA 358G NOTE 12.

2 For the meaning of 'book' see PARA 358F.

3 Public Lending Right Scheme 1982 art 19. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

4 For the meaning of 'sampling year' see PARA 358P NOTE 11.

5 For the meaning of 'author' see PARA 358E.

6 As to shares in public lending right see PARA 358H.

7 Public Lending Right Scheme 1982 art 20 (amended by SI 1997/1576).

8 Public Lending Right Scheme 1982 art 21(1).

- 9 Seniority must be determined by the order in which names stand in the register: Public Lending Right Scheme 1982 art 21(2).
- 10 Public Lending Right Scheme 1982 art 21(2).
- 11 Ie Public Lending Right Scheme 1982 arts 29, 30: see PARA 358N.
- 12 Public Lending Right Scheme 1982 art 21(3).
- 13 Ie the requirements of Public Lending Right Scheme 1982 art 14: art 22. An application for the transfer of a registered interest must be made in writing to the Registrar of Public Lending Right and must provide him, in such form as he may from time to time require, with the following information: (1) the title of the book; (2) the International Standard Book Number (if any) of the book; (3) the name and address of the transferor; (4) the name and address of the transferee; and (5) an undertaking by the transferee to furnish to the registrar, whenever so required, proof that the author is still alive: art 14(b), Sch 1 Pt II paras 1-5. As to the registrar see PARA 358C.
- 14 Public Lending Right Scheme 1982 art 22. As to the method of delivery see PARA 358I NOTE 3; and as to the registry see PARA 358G NOTE 3.
- 15 Public Lending Right Scheme 1982 art 23(1).
- 16 Public Lending Right Scheme 1982 art 23(2).
- 17 Public Lending Right Scheme 1982 art 24.
- 18 See the Public Lending Right Scheme 1982 art 10; and PARA 358G NOTE 15.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358L.
Registration by an author on attainment of full age.

358L. Registration by an author on attainment of full age.

An author¹ whose interest is registered² in the name of his parent or guardian may, on attaining full age³, make application to the Registrar of Public Lending Right⁴ for the transfer of the registration of the right into his own name, and until that transfer has been recorded the registrar is entitled to remit any sums due in respect of the right to the parent or guardian in whose name the interest is registered⁵.

1 For the meaning of 'author' see PARA 358E.

2 I.e. pursuant to the Public Lending Right Scheme 1982 art 17(3): see PARA 358I. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

3 The age of majority is 18 years: see the Family Law Reform Act 1969 s 1(1).

4 I.e. in accordance with the Public Lending Right Scheme 1982 arts 21-23, so far as they are applicable: see PARA 358K. As to the registrar see PARA 358C.

5 Public Lending Right Scheme 1982 art 25.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358M. Transmission on death.

358M. Transmission on death.

On production of the probate, letters of administration, or confirmation of executors of a registered owner¹, the personal representatives named in that probate, those letters or that confirmation must, on production of it or them to the Registrar of Public Lending Right², be registered as owner in place of the deceased owner³.

The personal representatives so registered may transfer the interest of the deceased owner⁴.

1 For the meaning of 'registered owner' see PARA 358G NOTE 11.

2 As to the registrar see PARA 358C.

3 Public Lending Right Scheme 1982 art 26. Registration is with the addition of the words 'executor or executrix (or administrator or administratrix) of [name] deceased': art 26. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

4 Public Lending Right Scheme 1982 art 27. The transfer must be in accordance with arts 21-24 (see PARA 358K) or such provisions of them as are applicable in the circumstances of the case: art 27.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358N. Transfer on bankruptcy or liquidation.

358N. Transfer on bankruptcy or liquidation.

On the production to the Registrar of Public Lending Right¹ of an office copy of an order of a court having jurisdiction in bankruptcy adjudging a registered owner bankrupt or directing the estate of a deceased registered owner² to be administered in accordance with an order under the Insolvency Act 1986³, together with a certificate signed by the official receiver that any registered interest⁴ in the name of the bankrupt registered owner, or deceased registered owner, is part of his property divisible amongst his creditors, the official receiver may be registered as the registered owner in place of the bankrupt or deceased registered owner⁵.

Where the official receiver has been registered as registered owner and some other person is subsequently appointed trustee, the trustee may be registered as registered owner in place of the official receiver on production of an office copy of the certificate of his appointment as trustee⁶. If the official receiver has not been entered on the register⁷, the trustee may be registered as registered owner on production of office copies of the order adjudging the registered owner bankrupt and the appropriate certificate, with a certificate signed by the trustee that the registered interest is part of the property of the bankrupt divisible amongst his creditors⁸.

If any registered interest is vested in a trustee under the provisions of a scheme of arrangement approved by a court having jurisdiction in bankruptcy, the official receiver or other trustee may be registered as owner in the same manner as a trustee in bankruptcy upon production of an office copy of the scheme of arrangement, a certificate signed by the official receiver, or that other trustee, that the registered interest was part of the property vested in him under the provisions of the scheme, and in the case of a trustee other than the official receiver, an office copy of the certificate of his appointment as trustee⁹.

In the liquidation of a company in which an interest in public lending right is vested, any resolution or order appointing a liquidator may be filed and referred to on the register, and, when so registered, is deemed to be in force until it is cancelled or superseded on the register¹⁰.

1 As to the registrar see PARA 358C.

2 For the meaning of 'registered owner' see PARA 358G NOTE 11.

3 Ie under the Insolvency Act 1986 s 421: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 823.

4 For the meaning of 'registered interest' see PARA 358G NOTE 12.

5 Public Lending Right Scheme 1982 art 28(1). For equivalent provisions relating to Northern Ireland and to Scotland see art 28(1), (2). As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

6 Public Lending Right Scheme 1982 art 29(1). For equivalent provisions relating to Northern Ireland and to Scotland see art 29(1), (2).

7 Ie under Public Lending Right Scheme 1982 art 28(1): see TEXT AND NOTES 1-5.

8 Public Lending Right Scheme 1982 art 29(3). For equivalent provisions relating to Northern Ireland and to Scotland see art 29(3), (4).

9 Public Lending Right Scheme 1982 art 30(1). For equivalent provisions relating to Northern Ireland and to Scotland see art 30(2), (3).

10 Public Lending Right Scheme 1982 art 31.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/3580. Renunciation.

3580. Renunciation.

On making application in that behalf which satisfies the prescribed requirements¹, the registered owner² of a registered interest³ may absolutely and unconditionally renounce that interest⁴. The renunciation may, as to extent, be in respect of either the whole or a half share of the registered interest and may be effective for all time, or in respect of such financial years⁵ as are specified by the registered owner⁶.

An application for renunciation must bear the proper Inland Revenue stamp impressed on it⁷.

As at the date from which the renunciation is to have effect, the Registrar of Public Lending Right must amend the register:

- 395 (1) in the case of a renunciation for all time of the whole of the registered interest, by removing from the register the entry relating to the registered owner and, if that interest represents the whole of the public lending right in a book, the entry relating to that book; or
- 396 (2) in all other cases, by noting against the relevant entry in the register the extent of the renunciation and the period during which it is effective⁸.

Any sum due by way of public lending right which, apart from the renunciation, would become payable to the registered owner by 31 March in any year falling within the period to which the renunciation applies, ceases to be so payable immediately upon the amendment of the register as provided above⁹.

1 le the requirements of the Public Lending Right Scheme 1982 art 14: art 32(1). Any application for renunciation must be made in writing to the Registrar of Public Lending Right and provide the following information in such form as he may from time to time require: (1) the name and address of the person renouncing; (2) the title of the book to which the renunciation relates; (3) the International Standard Book Number (if any) of the book; (4) the extent of the right being renounced; and (5) the period in respect of which the right is renounced: art 14(c), Sch 1 Pt III paras 1-5. For the meaning of 'book' see PARA 358F. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

2 For the meaning of 'registered owner' see PARA 358G NOTE 11.

3 For the meaning of 'registered interest' see PARA 358G NOTE 12.

4 Public Lending Right Scheme 1982 art 32(1).

5 'Financial year' means a period of 12 months ending on 31 March: Public Lending Right Scheme 1982 art 2(1).

6 Public Lending Right Scheme 1982 art 32(2).

7 Public Lending Right Scheme 1982 art 32(3).

8 Public Lending Right Scheme 1982 art 32(4).

9 Public Lending Right Scheme 1982 art 32(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358P. Ascertainment by means of a sample.

358P. Ascertainment by means of a sample.

The number of occasions on which a book¹ is lent out must be determined by means of a sample of the lendings of that book from particular service points², designated in accordance with the prescribed provisions³. For the purpose of the sample, service points are classified into specified groups⁴ according to local library authority areas⁵.

Such local library authorities as the Registrar of Public Lending Right⁶ may require must, not later than 30 September in each year, furnish to the registrar lists, as at 31 March of that year, of all their principal⁷, ordinary⁸ and mobile⁹ service points¹⁰. The registrar must, not later than 31 December of that year, designate¹¹ those service points which are to be operative sampling points¹² or which are to be included in operative sampling points as from the beginning of the ensuing sampling year¹³. At any time after he has so designated a sampling point, the registrar may, after giving the requisite notice¹⁴, discontinue the designation of that point and designate a new sampling point¹⁵. The discontinuance and the new point take effect from 1 January in the ensuing sampling year¹⁶.

The registrar must exercise his powers under these provisions so as to secure¹⁷ that:

- 397 (1) at all times there are not less than 30 operative sampling points distributed among the specified groups in the prescribed manner¹⁸;
- 398 (2) at all times the operative sampling points falling within each specified group include a principal service point and an ordinary service point;
- 399 (3) at all times one of the three operative sampling points in Wales is within one of certain principal areas¹⁹;
- 400 (4) at all times one of the three operative sampling points in Scotland is outside the Cities of Edinburgh and Glasgow;
- 401 (5) no operative sampling point consists of a mobile library service point other than one falling within one of certain principal areas in Wales²⁰;
- 402 (6) during each sampling year at least eight operative sampling points are replaced by new such points; and
- 403 (7) no operative sampling point remains as such for a continuous period of more than four years²¹.

The relevant local library authority must notify the registrar of any change in the categorisation of a sampling point which consists of a single principal, ordinary or mobile service point but the registrar is not required²² to discontinue the designation of the point as a sampling point before the expiry of the sampling year in which he receives the notice or, if that year has less than six months to run, before the expiry of the next following sampling year²³.

The local library authority must notify the registrar of any decision to close a service point which is or is included in a sampling point and the date on which the closure takes effect but, if it is not reasonably practicable for the registrar to satisfy the requirements of heads (1) to (7) above before the closure takes effect, those requirements must be treated as satisfied if satisfied as soon as is reasonably practicable thereafter²⁴.

1 For the meaning of 'book' see PARA 358F.

2 'Service point' means a place from which books comprised in a library are lent out to the public at large; and for these purposes, 'library' has the meaning assigned to it by the Public Lending Right Act 1979 s 3(4) (see PARA 358A NOTE 17): Public Lending Right Scheme 1982 art 36. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

3 Public Lending Right Scheme 1982 art 37.

4 Service points must be grouped according to local library authority areas as follows: (1) GROUP A: those within the areas of the following districts or, as the case may be, counties, ie Bedfordshire, Berkshire, Brighton and Hove, Buckinghamshire, Cambridgeshire, East Sussex, Essex, Hertfordshire, Kent, Luton, Milton Keynes, Norfolk, Northamptonshire, Oxfordshire, Suffolk, Surrey, West Sussex; (2) GROUP B: those within the areas of the following districts or, as the case may be, counties, ie Bath and North East Somerset, Bournemouth, City of Bristol, City of Portsmouth, City of Southampton, City of Stoke-on-Trent, Cornwall, Devon, Dorset, Gloucestershire, Hampshire, Hereford and Worcester, The Isle of Wight, The Isles of Scilly, North Somerset, Poole, Shropshire, Somerset, South Gloucestershire, Staffordshire, Swindon, Warwickshire, Wiltshire; (3) GROUP C: those within the areas of the following districts or, as the case may be, counties, ie Cheshire, City of Derby, City of Kingston upon Hull, City of Leicester, Cumbria, Darlington, Derbyshire, Durham, East Riding of Yorkshire, Hartlepool, Lancashire, Leicestershire, Lincolnshire, Middlesbrough, North East Lincolnshire, North Lincolnshire, Northumberland, North Yorkshire, Nottinghamshire, Redcar and Cleveland, Rutland, Stockton-on-Tees, York; (4) GROUP D: those within the areas of the metropolitan districts of England; (5) GROUP E: those within the area of Greater London; (6) GROUP F: those in Wales; (7) GROUP G: those in Scotland; and (8) group h, those in Northern Ireland: Public Lending Right Scheme 1982 art 36, Sch 2 (amended by SI 1996/1338; and by SI 1997/1576). For the meaning of 'local library authority' see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 926; and as to the application of this definition see PARA 358A NOTE 5.

5 Public Lending Right Scheme 1982 art 37.

6 As to the registrar see PARA 358C.

7 'Principal service point', in relation to a library authority, means any of the following: (1) whichever of the service points for which that authority is responsible is the service point from which the greatest number of loans were made during the preceding period of 12 months; (2) any service point for which that authority is responsible, the number of loans from which during the preceding period of 12 months was not less than three-quarters of the number of loans made from the service point referred to in head (1) during the same period; (3) any other such service point from which 500,000 or more loans were made during that period; and 'principal service points' means every service point which is a principal service point in relation to any library authority: Public Lending Right Scheme 1982 art 36. 'Loans' means loans whereby books are lent out from a service point to individual borrowers, and includes loans of books not normally held at that service point; and 'month' means one of the 12 months in the calendar year: art 36.

8 'Ordinary service point' means a service point from which fewer than 500,000 loans were made during the preceding period of 12 months: Public Lending Right Scheme 1982 art 36.

9 'Mobile library service point' means a service point which is taken about from place to place: Public Lending Right Scheme 1982 art 36.

10 Public Lending Right Scheme 1982 art 38(1).

11 The registrar must give to the local library authority responsible for a sampling point, for the purposes of designating that point under Public Lending Right Scheme 1982 art 38(1), (1A), notice in writing of such designation specifying the period ending on 31 December or 30 June, in any sampling year for which he intends the point to be an operative sampling point: art 38(5)(a). Unless the context otherwise requires, any requirement in the Public Lending Right Scheme 1982 for a local library authority to be notified of any matter is satisfied if such notification is sent through the post: art 3(b). 'Sampling point' means any principal service point, ordinary service point or mobile library service point, or any number of such points in relation to any local library authority, which has been designated, for the time being, by the registrar under art 38 (as amended); and 'sampling year' means the period of 12 months ending on 30 June: arts 2(1), 36. For the meaning of 'operative sampling point' see NOTE 12.

12 'Operative sampling point' means a sampling point at which loans are for the time being required to be recorded in pursuance of Public Lending Right Scheme 1982 art 40(1) (as amended) (see PARA 358Q): art 36.

13 Public Lending Right Scheme 1982 art 38(1).

14 The registrar must give to the local library authority responsible for a sampling point, for the purpose of discontinuing that point as a sampling point, not less than six months' notice in writing of such discontinuance: Public Lending Right Scheme 1982 art 38(5)(b).

- 15 Public Lending Right Scheme 1982 art 38(1A).
- 16 See the Public Lending Right Scheme 1982 art 38(1A).
- 17 *Ie* subject to Public Lending Right Scheme 1982 art 38(4): see TEXT AND NOTE 24.
- 18 See the Public Lending Right Scheme 1982 art 38(2)(a). The 30 operative sampling points must comprise: (1) five points falling within not less than three local library authority areas in Sch 2 Group A (as amended) and five points falling within not less than four local library authority areas in Sch 2 Group D; (2) four points falling within not less than three local library authority areas in each of Sch 2 Groups B, C (as amended) and Sch 2 Group E; (3) three points falling within not less than three local library authority areas in each of Sch 2 Groups F and G; and (4) two points falling within not less than two local library authority areas in Sch 2 Group H: art 38(2)(a).
- 19 The principal areas are Carmarthenshire, Pembrokeshire, Ceredigion, Isle of Anglesey, Gwynedd, Conwy, Denbighshire or Powys: Public Lending Right Scheme 1982 art 38(2)(c) (substituted by SI 1996/1338).
- 20 See NOTE 19.
- 21 Public Lending Right Scheme 1982 art 38(2) (amended by SI 1996/1338).
- 22 *Ie* by Public Lending Right Scheme 1982 art 38(2)(a): see head (1) in TEXT.
- 23 Public Lending Right Scheme 1982 art 38(3). For these purposes and the purposes of art 38(2)(a), a change in the categorisation of a sampling point must be disregarded if it is occasioned by an increase or decrease of less than 10% in the number of loans made therefrom: art 38(3).
- 24 Public Lending Right Scheme 1982 art 38(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358Q. Recording of loans.

358Q. Recording of loans.

Upon receipt of a notice designating a sampling point¹, a local library authority² must:

- 404 (1) arrange for every book which may be lent out from the sampling point to which the designation refers to be marked, in such form as the Registrar of Public Lending Right³ may require, with its identifying number⁴ and (where more than one copy⁵ may be lent out) copy number⁶, and must notify the registrar at such time and in such manner as he may direct of the number of books so marked⁷; and
- 405 (2) acquire, in accordance with arrangements approved by the registrar, such equipment (including computer programs) as may be necessary to enable the authority to comply with the following provisions⁸ regarding the furnishing of information to the registrar⁹.

A local library authority which has received a notice designating a sampling point must, for such period as is specified in the notice, record every occasion on which a copy of a book¹⁰ is lent out to the public from the sampling point to which the notice refers and must furnish to the registrar, in such form and at such intervals as he may direct, details of such lendings, including the identifying number and any copy number of the copy in question¹¹.

Each local library authority must submit to the registrar, in such form, at such intervals and in respect of such periods as he may direct, a return of the total number of occasions on which the books comprised in all its collections were the subject of loans¹².

1 I.e a notice under the Public Lending Right Scheme 1982 art 38(5)(a): see PARA 358P. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2; and for the meaning of 'sampling point' see PARA 358P NOTE 11.

2 For the meaning of 'local library authority' see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 926; and as to the application of this definition see PARA 358A NOTE 5.

3 As to the registrar see PARA 358C.

4 'Identifying number' means the number entered in the register in pursuance of the Public Lending Right Scheme 1982 art 8(1)(a)(iv) (see PARA 358G): art 36.

5 'Copy' means an individual copy of a particular book: Public Lending Right Scheme 1982 art 36. For the meaning of 'book' see PARA 358F.

6 'Copy number' means a number which distinguishes the copy to which it is applied from other copies of the same book in the same library: Public Lending Right Scheme 1982 art 36. For the meaning of 'library' see PARA 358P NOTE 2.

7 Public Lending Right Scheme 1982 art 39(a) (amended by SI 1997/1576).

8 I.e with the provisions of the Public Lending Right Scheme 1982 art 40 (as amended): see TEXT AND NOTES 10-11.

9 Public Lending Right Scheme 1982 art 39(b).

10 For these purposes, each volume of a work published in two or more volumes must be treated as a separate book: Public Lending Right Scheme 1982 art 40(2).

- 11 Public Lending Right Scheme 1982 art 40(1) (amended by SI 1997/1576).
- 12 Public Lending Right Scheme 1982 art 41.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358R.
Method of determining the number of notional loans.

358R. Method of determining the number of notional loans.

The Registrar of Public Lending Right¹ must, from the details of loans² furnished to him by local library authorities³ (upon the accuracy of which he is entitled to rely), calculate in accordance with the following provisions the number of notional loans of each book⁴ in respect of which public lending right subsists in each sampling year⁵. The number of notional loans of each book made during a sampling year is the aggregate of the number of notional loans of that book made in all groups⁶; and the number of notional loans for a group is determined in accordance with a prescribed formula⁷ and is arrived at as follows:

- 406 (1) the number of loans of that book recorded during the sampling year at the operative sampling points⁸ in that group ('A') is divided by the total number of loans of books made to the public during the sampling year from the operative sampling points in that group ('B'); and
- 407 (2) the resulting figure is then multiplied by the aggregate of the loans of all books made to the public from all libraries⁹ in the area of the group during the financial year¹⁰ ending in the sampling year in question, or, as regards any particular library for which loan data relating to that financial year is not available to the registrar, the most recent financial year for which he has such data ('C')¹¹.

For the purposes of this calculation, if on any occasion on which any details of lendings at a particular sampling point which consists of a single service point¹² are furnished to the registrar¹³ and record loans of a copy of a book in excess of an average of one loan for each period of five days covered by the details, the loans in excess of that average must be disregarded¹⁴. The registrar may also disregard any loan of a book from a sampling point where the local library authority does not specify an International Standard Book Number in respect of that book¹⁵.

1 As to the registrar see PARA 358C.

2 For the meaning of 'loans' see PARA 358P NOTE 7.

3 I.e. pursuant to the provisions of the Public Lending Right Scheme 1982 Pt IV (arts 36-45) (as amended): see PARA 358P; TEXT AND NOTES 4-15; and PARA 358R. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2. For the meaning of 'local library authority' see NATIONAL CULTURAL HERITAGE Vol 77 (2010) PARA 926; and as to the application of this definition see PARA 358A NOTE 5.

4 For the meaning of 'book' see PARA 358F.

5 Public Lending Right Scheme 1982 art 42(1). For the meaning of 'sampling year' see PARA 358P NOTE 11.

6 For these purposes, Public Lending Right Scheme 1982 art 36, Sch 2 Groups A, B and C (as amended) are treated as one group: art 42(3)(a).

7 See the Public Lending Right Scheme 1982 art 42(2).

8 For the meaning of 'operative sampling point' see PARA 358P NOTE 12.

9 For these purposes, 'library' has the same meaning as in the Public Lending Right Act 1979 s 3(4) (see PARA 358A NOTE 17): Public Lending Right Scheme 1982 art 42(2).

10 For the meaning of 'financial year' see PARA 358O NOTE 5.

- 11 Public Lending Right Scheme 1982 art 42(2).
- 12 For the meaning of 'service point' see PARA 358P NOTE 2.
- 13 le in accordance with the Public Lending Right Scheme 1982 art 40 (as amended): see PARA 358Q.
- 14 Public Lending Right Scheme 1982 art 42(3)(b).
- 15 Public Lending Right Scheme 1982 art 42(3)(c) (amened by SI 1999/420).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358S. Reimbursement of local library authorities.

358S. Reimbursement of local library authorities.

Subject to the following provisions, the Registrar of Public Lending Right¹ must reimburse to local library authorities² the net expenditure incurred by them in giving effect to the public lending right scheme³. It is the duty of local library authorities to keep proper accounts and records in respect of the expenditure, including overhead expenses, incurred by them in giving effect to the scheme and the registrar may withhold payment to a local library authority, in whole or in part, until such time as that authority has furnished to him sufficient evidence as to the amount of the expenditure so incurred⁴.

Each local library authority to which a notice has been given designating an operative sampling point⁵ must⁶ submit to the registrar, at such time and in such form as he may require, estimates of the net expenditure to be incurred in giving effect to the scheme at the sampling point or points specified in the notice⁷. During the participating period⁸ the local library authority may from time to time submit to the registrar claims in respect of the expenditure incurred, or estimated to have been incurred, by it, and the registrar is entitled to rely upon the accuracy of such claims and to make payments on account of the expenditure incurred by that authority in giving effect to the scheme⁹. The total amount payable by way of reimbursement to the local library authority must be finally determined by the registrar after examination of such audited financial statements and such books, records, documents, and accounts relating thereto as he may require; and any balance found after that final determination to be due by or to the registrar in account with the local library authority in question must be paid to or recovered from that local library authority¹⁰. In determining the amount finally to be paid to or recovered from a local library authority pursuant to this provision, account must be taken of any expenditure reasonably incurred by that authority in discontinuing the sampling point¹¹.

1 As to the registrar see PARA 358C.

2 For the meaning of 'local library authority' see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 926; and as to the application of this definition see PARA 358A NOTE 5.

3 Public Lending Right Act 1979 s 3(6); Public Lending Right Scheme 1982 art 43(1). In reckoning the net expenditure for the purposes of arts 43, 44 (as amended) (see TEXT AND NOTES 4-11), the following must be deducted from the gross expenditure incurred by a local library authority in connection with a sampling point: (1) any sum received in connection with the disposal (by sale, lease or otherwise) of any property or equipment purchased pursuant to art 39(b) (see PARA 358Q); (2) any sum which it might reasonably be expected would have been received on such a disposal (whether or not there has been a disposal of the property or equipment in question); (3) any insurance money received in respect of the loss or destruction of or damage to any such property or equipment; (4) an amount representing the appropriate proportion of the net cost (whether by way of purchase, lease, or otherwise) of any property or equipment which is used by a local library authority partly in connection with the scheme and partly for other purposes not connected therewith: art 44(4). Where, however, deductions are made under both heads (1) and (2) in respect of the same property or equipment, the aggregate deductions thereunder must not exceed whichever is the greater of the sums mentioned in those heads: art 44(4) proviso. For the meaning of 'sampling point' see PARA 358P NOTE 11. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

4 Public Lending Right Scheme 1982 art 43(2).

5 Ie a notice under Public Lending Right Scheme 1982 art 38(5)(a): see PARA 358P.

6 Ie without prejudice to the generality of Public Lending Right Scheme 1982 art 43(2): art 44(1).

7 Public Lending Right Scheme 1982 art 44(1) (amended by SI 1997/1576).

8 'Participating period', in relation to a sampling point, means the period commencing on the date on which the local library authority having responsibility for it receives from the registrar notice of designation pursuant to the Public Lending Right Scheme art 38(5) and ending on the date specified in a notice given thereunder as the date upon which it is to cease to act as a sampling point: art 36 (amended by SI 1997/1576).

9 Public Lending Right Scheme 1982 art 44(2).

10 Public Lending Right Scheme 1982 art 44(3).

11 Public Lending Right Scheme 1982 art 44(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358T. Determination of the sum due in respect of public lending right.

358T. Determination of the sum due in respect of public lending right.

The person entitled to the public lending right in respect of any registered book¹ in any financial year² is the registered owner³ thereof as at 30 June of that year⁴.

For any financial year, the sum due by way of public lending right in respect of a registered interest⁵ to the registered owner thereof is ascertained by reference to:

- 408 (1) the product of the number of notional loans attributable to that interest⁶ and the prescribed sum of money⁷; and
- 409 (2) the aggregate amount of that product and the like products in the case of all other registered interests which initially were registered interests of the same author⁸ or were interests registered by the personal representatives of the same author⁹.

The sum so due for the financial year is the product mentioned in head (1) above or, if the aggregate amount mentioned in head (2) above exceeds £6,000, the product of (a) the number of notional loans attributable to the interest in question ('x') divided by the aggregate of that number and the number of notional loans attributable to all other registered interests which initially were registered interests of the same author or were interests registered by the personal representatives of the same author ('y'); and (b) £6,000¹⁰.

If the aggregate of the amounts so determined in respect of each registered interest of the registered owner thereof is less than £5, the sum due in respect of the registered interest is nil¹¹.

No sum determined to be due under the scheme carries interest¹².

1 For the meaning of 'book' see PARA 358F.

2 For the meaning of 'financial year' see PARA 358O NOTE 5.

3 For the meaning of 'registered owner' see PARA 358G NOTE 11.

4 Public Lending Right Scheme 1982 art 47. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

5 For the meaning of 'registered interest' see PARA 358G NOTE 12.

6 For the purposes of the Public Lending Right Scheme 1982 art 46(1) (as amended) (see heads (1)-(2) in the TEXT), art 46(2)(b) (see heads (a)-(b) in the TEXT), the number of notional loans attributable to any registered interest in any financial year must be calculated by ascertaining, in accordance with art 42(2) (see PARA 358R), the number of notional loans of the book to which it relates which were made during the sampling year ending in that financial year, and must be: (1) if the registered interest represents the whole of the public lending right in respect of that book, the total notional loans of the book in question; (2) if the registered interest relates only to a share of the public lending right in respect of that book, such proportion of the total notional loans of the book as the registered interest bears to the whole of the public lending right in that book, fractions of a loan being disregarded; (3) if the right in respect of that registered interest has been renounced in part, such proportion of the notional loans attributable to the registered interest under heads (1) or (2), as the case may be, which the unrenounced share bears to the whole of the registered interest, fractions of a loan being disregarded; (4) nil, if the right in respect of the registered interest has been wholly renounced for the financial year in question: art 46(4). For the meaning of 'sampling year' see PARA 358P NOTE 11; and as to renunciation of public lending right see PARA 358O.

7 At the date at which this volume states the law, the prescribed sum of money was 2.07 pence: see the Public Lending Right Scheme 1982 (Commencement of Variations) (No 2) Order 1996, SI 1996/3237, which came into force on 1 January 1997, art 2.

8 For the purposes of the Public Lending Right Scheme 1982 art 46(1) (as amended) (see heads (1)-(2) in the TEXT), art 46(2)(b) (see heads (a)-(b) in the TEXT), the references to interests which were initially registered interests of the same author include interests which, in pursuance of art 17(3) (see PARA 358I), were registered in the name of his parent or guardian: art 46(5). For the meaning of 'author' see PARA 358E.

9 Public Lending Right Scheme 1982 art 46(1) (amended by virtue of SI 1996/3237).

10 Public Lending Right Scheme 1982 art 46(2).

11 Public Lending Right Scheme 1982 art 46(3) (amended by SI 1997/1576).

12 Public Lending Right Scheme art 51.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358U. Claim for payment.

358U. Claim for payment.

No payment may be made in respect of public lending right unless that right has been claimed by or on behalf of the person for the time being entitled¹. A claim in respect of the right may be made either for a specified period or for an unspecified period determinable by not less than three months' written notice of termination² given to the Registrar of Public Lending Right³ by or on behalf of the person for the time being entitled to the right⁴.

A claim automatically lapses in the event of any change of ownership recorded on the register⁵, subsequent to first registration thereof, in respect of the right to which the claim relates⁶.

The registrar may at any time require a statutory declaration or other sufficient evidence that an author⁷ or any registered owner⁸ is alive and is the person to whom money is payable under the public lending right scheme, and may withhold payment until such declaration or evidence as he may require is produced⁹.

1 Public Lending Right Scheme 1982 art 48(1). As to the person entitled to payment see art 47; and PARA 358T. As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

2 As to the method of giving notice see PARA 358I NOTE 3.

3 As to the registrar see PARA 358C.

4 Public Lending Right Scheme 1982 art 48(2).

5 As to the register see PARA 358G.

6 Public Lending Right Scheme 1982 art 48(3).

7 For the meaning of 'author' see PARA 358E.

8 For the meaning of 'registered owner' see PARA 358G NOTE 11.

9 Public Lending Right Scheme 1982 art 50.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358V. Notification of entitlement and payment of sums due.

358V. Notification of entitlement and payment of sums due.

Any sum payable by way of public lending right in respect of a registered interest¹ for any financial year² falls due for payment on the last day of that year, unless sooner paid³. Any such sum may be paid by cheque or warrant sent through the post directed to the registered address of the registered owner⁴ or, in the case of joint owners, to the registered address of the senior owner⁵ or to such person and to such address as the owner or joint owners may direct by a written payment mandate to the Registrar of Public Lending Right⁶, delivered at the registry⁷ in the prescribed form or a form to the like effect⁸. Every such cheque or warrant must be made payable to the order of the person to whom it is sent and any one of two or more joint owners may give a good receipt for any money due to them under the public lending right scheme⁹.

At the end of each financial year, or as soon as is reasonably practicable thereafter, the registrar must inform each registered owner, by notice posted to his registered address, of:

- 410 (1) the notional number of lendings¹⁰ for that year of each book¹¹ in respect of which he is a registered owner to whom a sum is payable by way of public lending right in respect of that year; and
- 411 (2) the amount of that sum¹².

If, after the registrar has so notified the registered owner, the cheque or warrant for the sum referred to is not presented for payment and thereby lapses, there is no further duty on the part of the registrar to take steps to trace the registered owner and it is the responsibility of that owner to make application to the registrar for payment¹³. If at the end of six years from the date upon which a payment in respect of public lending right becomes due no such application has been made by the person entitled to it, the entitlement to that payment lapses¹⁴.

At the request of a registered owner to whom no notice is required to be given under heads (1) and (2) above in respect of any financial year, the registrar must supply to him particulars¹⁵ of the number of notional loans during the sampling year¹⁶ ending in that financial year of any book in respect of which he is the registered owner, provided the request is made no later than six months after the end of that financial year¹⁷.

1 For the meaning of 'registered interest' see PARA 358G NOTE 12.

2 For the meaning of 'financial year' see PARA 358O NOTE 5.

3 Public Lending Right Scheme 1982 art 49(1). As to citation of the Public Lending Right Scheme 1982 see PARA 358E NOTE 2.

4 For the meaning of 'registered owner' see PARA 358G NOTE 11.

5 For the meaning of 'senior owner' see PARA 358K NOTE 9.

6 As to the registrar see PARA 358C.

7 As to the registry see PARA 358G NOTE 3; and as to the method of delivery see PARA 358I NOTE 3.

8 Public Lending Right Scheme 1982 art 49(2). For the prescribed form of payment mandate see art 49(2), Sch 4.

- 9 Public Lending Right Scheme 1982 art 49(2).
- 10 As to the calculation of this number see PARA 358R.
- 11 For the meaning of 'book' see PARA 358F.
- 12 Public Lending Right Scheme 1982 art 49(3).
- 13 Public Lending Right Scheme 1982 art 49(4)(a).
- 14 Public Lending Right Scheme 1982 art 49(4)(b).
- 15 Is calculated in accordance with Public Lending Right Scheme 1982 art 42: see PARA 358R.
- 16 For the meaning of 'sampling year' see PARA 358P NOTE 11.
- 17 Public Lending Right Scheme 1982 art 49(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/358W. In general.

358W. In general.

It is an offence for any person, in connection with the entry of any matter whatsoever in the register¹, to make any statement which he knows to be false in a material particular or recklessly to make any statement which is false in a material particular². A person who commits such an offence is liable on summary conviction to a fine of not more than level 5 on the standard scale³.

Where such an offence which has been committed by a body corporate⁴ is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against accordingly⁵.

1 As to the register see PARA 358G.

2 Public Lending Right Act 1979 s 4(7).

3 Public Lending Right Scheme 1982 s 4(7) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 437 NOTE 33.

4 As to the criminal capacity of incorporated bodies see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38.

5 Public Lending Right Act 1979 s 4(8). Where the affairs of a body corporate are managed by its members, this provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 4(8).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/359. Supply of copies to other libraries.

359. Supply of copies to other libraries.

The librarian¹ of a prescribed library² may, if the prescribed conditions³ are complied with, make and supply to another prescribed library a copy⁴ of:

- 412 (1) an article⁵ in a periodical⁶; or
- 413 (2) the whole or part of a published edition⁷ of a literary⁸, dramatic⁹ or musical¹⁰ work¹¹,

without infringing any copyright¹² in the text of the article or, as the case may be, in the work, in any illustrations accompanying it, or in the typographical arrangement¹³. Head (2) above does not apply if at the time the copy is made the librarian making it knows, or could by reasonable inquiry ascertain, the name and address of a person entitled to authorise the making of the copy¹⁴.

The prescribed conditions are:

- 414 (a) that the other prescribed library is not furnished with more than one copy of the article or of the whole or part of the published edition¹⁵; or
- 415 (b) that, where the requirement is for a copy of more than one article in the same issue of a periodical, or for a copy of the whole or part of a published edition, the other prescribed library furnishes a written statement to the effect that it is a prescribed library and that it does not know, and could not by reasonable inquiry ascertain, the name and address of a person entitled to authorise the making of the copy¹⁶; and
- 416 (c) that the other prescribed library must be required to pay for the copy a sum equivalent to but not exceeding the cost, including a contribution to the general expenses of the library, attributable to its production¹⁷.

1 As to references to 'the librarian' see PARA 353 note 11 ante.

2 For the meaning of 'prescribed library' see PARA 354 ante.

3 The conditions prescribed by regulations made by the Secretary of State: Copyright, Designs and Patents Act 1988 s 37(1)(b). As to such conditions see the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 5 (as amended); and the text to notes 15-17 infra. As to the making of regulations see PARA 353 ante. As to the Secretary of State see PARA 183 note 2 ante.

4 For the meaning of 'copy' see PARA 314 ante.

5 For the meaning of 'article' see PARA 356 note 5 ante.

6 Copyright, Designs and Patents Act 1988 s 41(1)(a). As to the application of s 41 see PARA 337 ante.

7 For the meaning of 'published edition' see PARA 92 ante.

8 For the meaning of 'literary work' see PARA 67 ante.

9 For the meaning of 'dramatic work' see PARA 73 ante.

10 For the meaning of 'musical work' see PARA 73 ante.

- 11 Copyright, Designs and Patents Act 1988 s 41(1)(b).
- 12 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.
- 13 Copyright, Designs and Patents Act 1988 s 41(1).
- 14 Ibid s 41(2).
- 15 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 5(1), (2)(a).
- 16 Ibid reg 5(1), (2)(b).
- 17 Ibid reg 5(1), (2)(c) (amended by SI 2003/2498).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/360.
Replacement copies of works.

360. Replacement copies of works.

The librarian¹ or archivist² of a prescribed library³ or archive⁴ may, if the prescribed conditions⁵ are complied with, make a copy⁶ from any item in the permanent collection of the library or archive:

- 417 (1) in order to preserve or replace that item by placing the copy in its permanent collection in addition to or in place of it⁷; or
- 418 (2) in order to replace in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged⁸,

without infringing the copyright⁹ in any literary¹⁰, dramatic¹¹ or musical¹² work, in any illustrations accompanying such a work or, in the case of a published edition¹³, in the typographical arrangement¹⁴. The prescribed conditions must include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question to fulfil that purpose¹⁵.

The prescribed conditions are:

- 419 (a) that the item in question is an item in the part of the permanent collection maintained by the library or archive wholly or mainly for the purposes of reference on the premises of the library or archive, or is an item in the permanent collection of the library or archive which is available on loan only to other libraries or archives¹⁶;
- 420 (b) that it is not reasonably practicable for the librarian¹⁷ or archivist¹⁸ to purchase a copy of that item to fulfil the purpose under head (1) or head (2) above¹⁹;
- 421 (c) that the other prescribed library or archive furnishes a written statement to the effect that the item has been lost, destroyed or damaged and that it is not reasonably practicable for it to purchase a copy of that item, and that, if a copy is supplied, it will only be used to fulfil the purpose in head (2) above²⁰;
- 422 (d) that the other prescribed library or archive must be required to pay for the copy a sum equivalent to but not exceeding the cost, including a contribution to the general expenses of the library or archive, attributable to its production²¹.

1 As to references to 'the librarian' see PARA 353 note 11 ante.

2 As to references to 'the archivist' see PARA 353 note 12 ante.

3 For the meaning of 'prescribed library' see PARA 354 ante.

4 For the meaning of 'prescribed archive' see PARA 355 ante.

5 The conditions prescribed by regulations made by the Secretary of State: Copyright, Designs and Patents Act 1988 s 37(1)(b). As to such conditions see the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 6 (as amended); and the text to notes 16-21 infra. As to the making of regulations see PARA 353 ante. As to the Secretary of State see PARA 183 note 2 ante.

6 For the meaning of 'copy' see PARA 314 ante.

- 7 Copyright, Designs and Patents Act 1988 s 42(1)(a). As to the application of s 42 see PARA 337 ante.
- 8 Ibid s 42(1)(b).
- 9 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.
- 10 For the meaning of 'literary work' see PARA 67 ante.
- 11 For the meaning of 'dramatic work' see PARA 73 ante.
- 12 For the meaning of 'musical work' see PARA 73 ante.
- 13 For the meaning of 'published edition' see PARA 92 ante.
- 14 Copyright, Designs and Patents Act 1988 s 42(1).
- 15 Ibid s 42(2).
- 16 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 6(1), (2)(a).
- 17 For the meaning of 'the librarian' for these purposes see PARA 354 note 3 ante.
- 18 For the meaning of 'the archivist' for these purposes see PARA 355 note 8 ante.
- 19 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 6(1), (2)(b).
- 20 Ibid reg 6(1), (2)(c).
- 21 Ibid reg 6(1), (2)(d) (amended by SI 2003/2498).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/361. Certain unpublished works.

361. Certain unpublished works.

The librarian¹ or archivist² of a prescribed library³ or archive⁴ may, if the prescribed conditions⁵ are complied with, make and supply a copy⁶ of the whole or part of a literary⁷, dramatic⁸ or musical⁹ work from a document in the library or archive without infringing any copyright¹⁰ in the work or any illustrations accompanying it¹¹. These provisions do not apply if the work had been published¹² before the document was deposited in the library or archive, or the copyright owner¹³ has prohibited copying of the work, and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact¹⁴.

The prescribed conditions must include the following:

- 423 (1) that copies are supplied only to persons satisfying the librarian or archivist that they require them for the purposes of research for a non-commercial purpose¹⁵, or private study¹⁶, and will not use them for any other purpose¹⁷;
- 424 (2) that no person is furnished with more than one copy of the same material¹⁸; and
- 425 (3) that persons to whom copies are supplied are required to pay for them a sum not less than the cost, including a contribution to the general expenses of the library or archive, attributable to their production¹⁹.

The prescribed conditions are:

- 426 (a) that no copy of the whole or part of the work may be supplied to the person requiring the same unless he satisfies the librarian or archivist that he requires the copy for purposes of research, for a non-commercial purpose or private study and will not use it for any other purpose and he has delivered to the librarian or, as the case may be, the archivist a declaration in writing, in relation to that work, substantially in the prescribed form²⁰ and signed in the manner therein indicated²¹;
- 427 (b) that such person is not furnished with more than one copy of the same material²²; and
- 428 (c) that such person is required to pay for the copy a sum not less than the cost, including a contribution to the general expenses of the library or archive, attributable to its production²³.

Unless the librarian²⁴ or archivist²⁵ is aware that the signed declaration delivered to him is false in a material particular, he may rely on it as to the matter he is required to be satisfied on before making or supplying the copy²⁶.

Where a person requesting a copy makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy²⁷ if made by him he is liable for infringement of copyright as if he had made the copy himself²⁸, and the copy is to be treated as an infringing copy²⁹.

1 As to references to 'the librarian' see PARA 353 note 11 ante.

2 As to references to 'the archivist' see PARA 353 note 12 ante.

- 3 For the meaning of 'prescribed library' see PARA 354 ante.
- 4 For the meaning of 'prescribed archive' see PARA 355 ante.
- 5 The conditions prescribed by regulations made by the Secretary of State: Copyright, Designs and Patents Act 1988 s 37(1)(b). As to such conditions see the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 7 (as amended); and the text to notes 20-26 infra. As to the making of regulations see PARA 353 ante. As to the Secretary of State see PARA 183 note 2 ante.
- 6 For the meaning of 'copy' see PARA 314 ante.
- 7 For the meaning of 'literary work' see PARA 67 ante.
- 8 For the meaning of 'dramatic work' see PARA 73 ante.
- 9 For the meaning of 'musical work' see PARA 73 ante.
- 10 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.
- 11 Copyright, Designs and Patents Act 1988 s 43(1). As to the application of s 43 (as amended) see PARA 337 ante.
- 12 For the meaning of 'published' see PARA 63 ante.
- 13 As to who is the owner of the copyright in a work see PARA 118 et seq ante.
- 14 Copyright, Designs and Patents Act 1988 s 43(2).
- 15 Ibid s 43(3)(a)(i) (s 43(3)(a) substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 14(2)).
- 16 Copyright, Designs and Patents Act 1988 s 43(3)(a)(ii) (as substituted: see note 15 supra). For the meaning of 'private study' see PARA 338 note 9 ante.
- 17 Ibid s 43(3)(a) (as substituted: see note 15 supra).
- 18 Ibid s 43(3)(b).
- 19 Ibid s 43(3)(c).
- 20 For the prescribed form of declaration see the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 7(2)(a), Sch 2 Form B (amended by SI 2003/2498).
- 21 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 7(1), (2)(a) (amended by SI 2003/2498).
- 22 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 7(1), (2)(b).
- 23 Ibid reg 7(1), (2)(c).
- 24 For the meaning of 'the librarian' for these purposes see PARA 354 note 3 ante.
- 25 For the meaning of 'the archivist' for these purposes see PARA 355 note 8 ante.
- 26 Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989, SI 1989/1212, reg 7(1), (3).
- 27 For the meaning of 'infringing copy' see PARA 335 ante.
- 28 Copyright, Designs and Patents Act 1988 s 37(3)(a).
- 29 Ibid s 37(3)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/362.
Publication of archives; works made before 1 August 1989.

362. Publication of archives; works made before 1 August 1989.

Where, at a time more than 50 years from the end of the calendar year in which the author¹ of a literary², dramatic³ or musical⁴ work made before 1 August 1989⁵ died, and more than 100 years after the time, or the end of the period at or during which the work was made⁶, copyright subsists in the work but the work has not been published and the manuscript or a copy of the work is kept in a library, museum or other institution where, subject to any provisions regulating the institution, it is open to public inspection, the copyright in the work is not infringed by a person who reproduces the work for purposes of research or private study or with a view to publication⁷.

Where a published literary, dramatic or musical work ('the new work') incorporates the whole or part of a work ('the old work') in the case of which the above circumstances⁸ existed immediately before the new work was published and, immediately before the new work was published, the identity of the owner of the copyright in the old work was not known to the publisher of the new work, that publication of the new work and any subsequent publication of the new work, either in the same or in an altered form, is not to be treated, in so far as it constitutes a publication of the old work, as an infringement of the copyright in the old work or as an unauthorised publication of the old work⁹.

In relation to an article or other work which is accompanied by one or more artistic works¹⁰ provided for explaining or illustrating it ('illustrations'), the above provisions¹¹ apply as if references to the doing of any act in relation to the work included references to the doing of that act in relation to the work together with any of the illustrations¹².

In so far as the publication of a work, or of part of a work, is not to be treated¹³ as an infringement of the copyright in the work, a person who subsequently broadcasts the work, or that part of it, as the case may be, or includes it in a cable programme, or performs it in public, or makes a record of it, does not thereby infringe the copyright in the work¹⁴.

1 In relation to a work of joint authorship, the reference to the author is to be construed as a reference to the author who died last: Copyright Act 1956 s 11(2), Sch 3 para 2 (repealed). Although Sch 3 para 2 (repealed) is not continued in force by the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 16, it is submitted that it would nevertheless be appropriate to refer to it for the purposes of the interpretation of the provisions of the Copyright Act 1956 s 7(6)-(8), (9)(d) (repealed), which are continued in force by the Copyright, Designs and Patents Act 1988 Sch 1 para 16.

2 For the meaning of 'literary work' see PARA 37 note 2 ante.

3 For the meaning of 'dramatic work' see PARA 37 note 3 ante.

4 The expression 'musical work' was not defined in the Copyright Act 1956 (repealed). For the meaning of 'musical work' in the Copyright, Designs and Patents Act 1988 see PARA 73 ante.

5 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

6 Ie the time or period at which it was first recorded in writing or otherwise: *ibid* ss 3(2), 170, Sch 1 para 3.

7 Copyright Act 1956 s 7(6) (repealed). This provision is continued in force by the Copyright, Designs and Patents Act 1988 Sch 1 para 16(a).

8 Ie the circumstances specified in the Copyright Act 1956 s 7(6) (repealed; but continued in force) (see the text to notes 1-7 *supra*).

9 Ibid s 7(7) (repealed). This provision is continued in force by the Copyright, Designs and Patents Act 1988 Sch 1 para 16(b). The Copyright Act 1956 s 7(7) (repealed; but continued in force) does not apply to a subsequent publication incorporating a part of the old work which was not included in the new work as originally published unless the circumstances specified in s 7(6) (repealed; but continued in force) and in s 7(7) (repealed; but continued in force) otherwise existed immediately before that subsequent publication: s 7(7) proviso (repealed). This provision is continued in force by the Copyright, Designs and Patents Act 1988 Sch 1 para 16(b).

10 For the meaning of 'artistic work' see PARA 75 ante.

11 Ie the Copyright Act 1956 s 7(6), (7) (repealed; but continued in force).

12 Ibid s 7(9)(d) (repealed). This provision is continued in force by the Copyright, Designs and Patents Act 1988 Sch 1 para 16.

13 Ie by virtue of the Copyright Act 1956 s 7(7) (repealed; but continued in force) (see the text to notes 8-9 supra).

14 Ibid s 7(8) (amended by the Cable and Broadcasting Act 1984 s 57(1), Sch 5 para 6(5); repealed). This provision is continued in force by the Copyright, Designs and Patents Act 1988 Sch 1 para 16(c).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/363. Copy of work required to be made as condition of export.

363. Copy of work required to be made as condition of export.

If an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom¹ unless a copy² of it is made and deposited in an appropriate library or archive, it is not an infringement of copyright³ to make that copy⁴.

1 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

2 For the meaning of 'copy' see PARA 314 ante.

3 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

4 Copyright, Designs and Patents Act 1988 s 44. As to the application of s 44 see PARA 337 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vi) Libraries and Archives/364. Deposit libraries.

364. Deposit libraries.

Copyright is not infringed¹ by the copying² of a work from the internet by a deposit library³ or person acting on its behalf if the work is of a description prescribed⁴ by regulations⁵, its publication⁶ on the internet, or a person publishing it there, is connected with the United Kingdom⁷ in a manner so prescribed⁸, and the copying is done in accordance with any conditions so prescribed⁹.

Copyright is not infringed by the doing of anything in relation to relevant material¹⁰ permitted to be done under regulations¹¹ under the Legal Deposit Libraries Act 2003¹².

The Secretary of State¹³ may by regulations make provision excluding, in relation to prescribed¹⁴ activities done in relation to relevant material, the application of such of the provisions of the Copyright, Designs and Patents Act 1988¹⁵ as are prescribed¹⁶. Such regulations may in particular make provision prescribing activities done:

- 429 (1) for a prescribed purpose¹⁷;
- 430 (2) by prescribed descriptions of reader¹⁸;
- 431 (3) in relation to prescribed descriptions of relevant material¹⁹;
- 432 (4) other than in accordance with prescribed conditions²⁰,

and may make different provision for different purposes²¹. Any such regulations must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament²².

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 For the meaning of 'copying' see PARA 314 ante.

3 For the meaning of 'deposit library' see PARA 15 note 3 ante. For these purposes references to a deposit library include references to the Faculty of Advocates: Legal Deposit Libraries Act 2003 s 7(5)(d); definition applied by the Copyright, Designs and Patents Act 1988 s 44A(7)(b) (s 44A added by the Legal Deposit Libraries Act 2003 s 8(1)).

4 I.e. of a description prescribed by regulations under the Legal Deposit Libraries Act 2003 s 10(5). At the date at which this volume states the law no such regulations had been made.

5 Copyright, Designs and Patents Act 1988 s 44A(1)(a) (as added: see note 3 supra). As to the application of s 44A (as added) see PARA 337 ante.

6 For the meaning of 'publication' see PARA 63 ante.

7 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

8 Copyright, Designs and Patents Act 1988 s 44A(1)(b) (as added: see note 3 supra).

9 Ibid s 44A(1)(c) (as added: see note 3 supra).

10 'Relevant material' means: (1) a copy delivered under the Legal Deposit Libraries Act 2003 s 1 of a work published in a medium other than print; (2) a copy delivered pursuant to regulations under s 6 of a computer program or material within s 6(2)(b); (3) a copy of a work to which s 10(6) applies; (4) a copy (at any remove) of anything within any of heads (1)-(3) above: s 7(5)(b); definition applied by the Copyright, Designs and Patents

Act 1988 s 44A(7)(b) (as added: see note 3 supra). As to the Legal Deposit Libraries Act 2003 see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 898; LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS.

11 Ie under ibid s 7. At the date at which this volume states the law no such regulations had been made.

12 Copyright, Designs and Patents Act 1988 s 44A(2) (as added: see note 3 supra).

13 As to the Secretary of State see PARA 183 note 2 ante.

14 'Prescribed' means prescribed by regulations made by the Secretary of State: Copyright, Designs and Patents Act 1988 s 44A(7)(c) (as added: see note 3 supra).

15 Ie the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended) (acts permitted in relation to copyright works).

16 Ibid s 44A(3) (as added: see note 3 supra).

17 Ibid s 44A(4)(a) (as added: see note 3 supra).

18 Ibid s 44A(4)(b) (as added: see note 3 supra). 'Reader' means a person who, for the purposes of research or study and with the permission of a deposit library, is on library premises controlled by it: Legal Deposit Libraries Act 2003 s 7(5)(a); definition applied by the Copyright, Designs and Patents Act 1988 s 44A(7)(b) (as added: see note 3 supra).

19 Ibid s 44A(4)(c) (as added: see note 3 supra).

20 Ibid s 44A(4)(d) (as added: see note 3 supra).

21 Ibid s 44A(5) (as added: see note 3 supra).

22 Ibid s 44A(6) (as added: see note 3 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vii) Public Administration/365. Parliamentary and judicial proceedings.

(vii) Public Administration

365. Parliamentary and judicial proceedings.

Copyright is not infringed¹ by anything done for the purposes of Parliamentary² or judicial³ proceedings⁴. Nor is copyright infringed by anything done for the purposes of reporting such proceedings; but this is not to be construed as authorising the copying⁵ of a work which is itself a published⁶ report of the proceedings⁷.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 'Parliamentary proceedings' includes proceedings of the Northern Ireland Assembly, the Scottish Parliament or the European Parliament: Copyright, Designs and Patents Act 1988 s 178 (definition amended by the Northern Ireland (Elections) Act 1998 s 1, Schedule para 9; the Northern Ireland Act 1998 s 99, Sch 13 para 8(1), (7); and the Scotland Act 1998 s 125, Sch 8 para 25(7)(b)). As to the Northern Ireland Assembly and the Scottish Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 'Judicial proceedings' includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person's legal rights or liabilities: Copyright, Designs and Patents Act 1988 s 178.

4 Ibid s 45(1). As to the application of s 45 see PARA 337 ante. It is arguable that the copying of pages from a personal diary for use as evidence in possible future divorce proceedings could come within s 45(1): *A v B* [2000] EMLR 1007, [2000] IP & T 1368.

5 For the meaning of 'copying' see PARA 314 ante.

6 For the meaning of 'published' see PARA 63 ante.

7 Copyright, Designs and Patents Act 1988 s 45(2).

UPDATE

365 Parliamentary and judicial proceedings

NOTE 2--'Parliamentary proceedings' also includes proceedings of the Welsh Assembly Government: 1988 Act s 178 (amended by the Government of Wales Act 2006 Sch 10 para 29).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vii) Public Administration/366. Royal Commissions and statutory inquiries.

366. Royal Commissions and statutory inquiries.

Copyright is not infringed¹:

- 433 (1) by anything done for the purposes of the proceedings of a Royal Commission² or statutory inquiry³;
- 434 (2) by anything done for the purpose of reporting any such proceedings held in public, but this is not to be construed as authorising the copying⁴ of a work which is itself a published⁵ report of the proceedings⁶.

Nor is copyright in a work infringed by the issue to the public of copies⁷ of the report of a Royal Commission or statutory inquiry containing the work or material from it⁸.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 'Royal Commission' includes a Commission appointed for Northern Ireland by the Secretary of State in pursuance of the prerogative powers of Her Majesty delegated to him under the Northern Ireland Constitution Act 1973 s 7(2) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 74): Copyright, Designs and Patents Act 1988 s 46(4). As to the Secretary of State see PARA 183 note 2 ante.

3 Ibid s 46(1). As to the application of s 46 see PARA 337 ante. 'Statutory inquiry' means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment: s 46(4). For the meaning of 'enactment' see PARA 55 note 4 ante.

4 For the meaning of 'copying' see PARA 314 ante.

5 For the meaning of 'published' see PARA 63 ante.

6 Copyright, Designs and Patents Act 1988 s 46(2).

7 As to references to the issue to the public of copies of a work see PARA 322 ante.

8 Copyright, Designs and Patents Act 1988 s 46(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vii) Public Administration/367. Material open to public inspection or on official register.

367. Material open to public inspection or on official register.

Where material is open to public inspection pursuant to a statutory requirement¹, or is on a statutory register², any copyright³ in the material as a literary work⁴ is not infringed by the copying⁵ of so much of the material as contains factual information of any description, by or with the authority of the appropriate person⁶, for a purpose which does not involve the issuing of copies to the public⁷.

Where material is open to public inspection pursuant to a statutory requirement, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed⁸.

Where material which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contains information about matters of general scientific, technical, commercial or economic interest, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of disseminating that information⁹.

The Secretary of State¹⁰ may by order provide that the above provisions¹¹, in such cases as may be specified in the order, apply only to copies marked in such manner as may be so specified¹²; and he may also by order provide that the above provisions¹³ apply, to such extent and with such modifications as may be specified in the order:

- 435 (1) to material made open to public inspection by an international organisation¹⁴ specified in the order¹⁵ or a person so specified who has functions in the United Kingdom¹⁶ under an international agreement to which the United Kingdom is party¹⁷; or
- 436 (2) to a register maintained by an international organisation specified in the order¹⁸,

as they apply in relation to material open to public inspection pursuant to a statutory requirement or to a statutory register¹⁹.

An order under the above provisions must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament²⁰.

1 'Statutory requirement' means a requirement imposed by provision made by or under an enactment: Copyright, Designs and Patents Act 1988 s 47(6). For the meaning of 'enactment' see PARA 55 note 4 ante.

2 'Statutory register' means a register maintained in pursuance of a statutory requirement: *ibid* s 47(6).

3 For the meaning of 'copyright' see PARA 57 ante.

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'copying' see PARA 314 ante.

6 'Appropriate person' means the person required to make the material open to public inspection or, as the case may be, the person maintaining the register: Copyright, Designs and Patents Act 1988 s 47(6).

7 Ibid s 47(1). As to references to the issue to the public of copies of a work see PARA 322 ante. As to the application of s 47 see PARA 337 ante.

8 Ibid s 47(2).

9 Ibid s 47(3).

10 As to the Secretary of State see PARA 183 note 2 ante.

11 Ie the Copyright, Designs and Patents Act 1988 s 47(1), (2) or (3): see the text and notes 1-9 supra.

12 Ibid s 47(4). The provisions of the Copyright, Designs and Patents Act 1988 s 47(2), (3) (see the text and notes 8, 9 supra) apply, in the case of a map which is open to public inspection pursuant to a statutory requirement, only to copies of the map marked in the specified manner: Copyright (Material Open to Public Inspection) (Marking of Copies of Maps) Order 1989, SI 1989/1099, art 2. The Copyright, Designs and Patents Act 1988 s 47(2) (see the text and note 8 supra) applies, in the case of a plan or drawing which is open to public inspection pursuant to a statutory requirement, only to copies of the plan or drawing marked in the specified manner: Copyright (Material Open to Public Inspection) (Marking of Copies of Plans and Drawings) Order 1990, SI 1990/1427, art 2.

13 Ie the Copyright, Designs and Patents Act 1988 s 47(1)-(3): see the text and notes 1-9 supra.

14 For the meaning of 'international organisation' see PARA 155 note 8 ante.

15 Copyright, Designs and Patents Act 1988 s 47(5)(a)(i).

16 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

17 Copyright, Designs and Patents Act 1988 s 47(5)(a)(ii).

18 Ibid s 47(5)(b).

19 Ibid s 47(5). The provisions of s 47(1)-(3) apply to material made open to public inspection by:

28 (1) the European Patent Office under the Convention on the Grant of European Patents (Munich, 5 October 1973; TS 20 (1978); Cmnd 7090) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 668 et seq); and

29 (2) the World Intellectual Property Organisation under the Patent Co-operation Treaty (Washington, 19 June - 31 December 1970; TS 78 (1978); Cmnd 7340) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 653 et seq),

as they apply in relation to material open to public inspection pursuant to a statutory requirement or to a statutory register, subject to the modification that the provisions of the Copyright, Designs and Patents Act 1988 s 47(1)-(3) are to be modified so as to refer to the Comptroller General of Patents, Designs and Trade Marks instead of the appropriate person: see the Copyright (Material Open to Public Inspection) (International Organisations) Order 1989, SI 1989/1098, arts 2, 3. As to the Comptroller General of Patents, Designs and Trade Marks see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 577.

20 Copyright, Designs and Patents Act 1988 s 47(7).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vii) Public Administration/368. Material communicated to the Crown in the course of public business.

368. Material communicated to the Crown in the course of public business.

The following provisions apply where a literary¹, dramatic², musical³ or artistic⁴ work has in the course of public business⁵ been communicated to the Crown for any purpose, by or with the licence of the copyright owner⁶, and a document or other material thing recording or embodying the work is owned by or in the custody or control of the Crown⁷.

The Crown may, for the purpose for which the work was communicated to it, or any related purpose which could reasonably have been anticipated by the copyright owner, copy⁸ the work and issue copies of the work to the public⁹ without infringing any copyright in the work¹⁰. The Crown may not copy a work, or issue copies of a work to the public, by virtue of these provisions if the work has previously been published¹¹ otherwise than by virtue of these provisions¹².

These provisions have effect subject to any agreement to the contrary between the Crown and the copyright owner¹³.

1 For the meaning of 'literary work' see PARA 67 ante.

2 For the meaning of 'dramatic work' see PARA 73 ante.

3 For the meaning of 'musical work' see PARA 73 ante.

4 For the meaning of 'artistic work' see PARA 75 ante.

5 'Public business' includes any activity carried on by the Crown: Copyright, Designs and Patents Act 1988 s 48(4). For the meaning of 'the Crown' see PARA 5 note 2 ante. For the purposes of s 48, 'the Crown' includes a health service body, as defined in the National Health Service and Community Care Act 1990 s 60(7), a primary care trust established under the National Health Service Act 1977 s 16A (as added), the Commission for Social Care Inspection, the Commission for Healthcare Audit and Inspection, a National Health Service trust established under the National Health Service Act 1977 Pt I (ss 1-28Y) (as amended) or the National Health Service (Scotland) Act 1978, an NHS foundation trust, a health and social services body as defined in the Health and Personal Social Services (Northern Ireland) Order 1991, SI 1991/194, art 7(6) and a Health and Social Services trust established under that order; and the reference in the Copyright, Designs and Patents Act 1988 s 48(1) to public business is to be construed accordingly: s 48(6) (added by the National Health Service and Community Care Act 1990 s 60, Sch 8 Pt I para 3; and amended by the Health and Personal Social Services (Northern Ireland) Order 1991, SI 1991/194, art 7(2)(a), Sch 2 Pt I; the Health Act 1999 (Supplementary and Consequential Provisions) Order 1999, SI 1999/2795, art 3; the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, art 3(1), Sch 1 para 22; the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 71, 72; and the Health and Social Care (Community Health and Standards) Act 2003 (Commission for Healthcare Audit and Inspection and Commission for Social Care Inspection) (Consequential Provisions) Order 2004, SI 2004/2987, art 2(1)(b)(i), (ii)). As to the Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE; and as to the other bodies referred to above see HEALTH SERVICES.

6 As to the licence of the copyright owner see PARAS 121, 175 notes 4, 6 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

7 Copyright, Designs and Patents Act 1988 s 48(1). As to the application of s 48 (as amended) see PARA 337 ante.

8 For the meaning of 'copy' see PARA 314 ante.

9 As to references to the issue to the public of copies of a work see PARA 322 ante.

10 Copyright, Designs and Patents Act 1988 s 48(2).

- 11 For the meaning of 'published' see PARA 63 ante.
- 12 Copyright, Designs and Patents Act 1988 s 48(3).
- 13 Ibid s 48(5).

UPDATE

368 Material communicated to the Crown in the course of public business

NOTE 5--1988 Act s 48(6) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 112; Health and Social Care Act 2008 Sch 5 para 60. SI 1999/2795 revoked: 2006 Act Sch 4. SI 2004/2987 revoked: SI 2009/462.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vii) Public Administration/369. Public records.

369. Public records.

Material which is comprised in public records¹, or in Welsh public records², which are open to public inspection³ may be copied⁴, and a copy may be supplied to any person, by or with the authority of any duly appointed officer⁵, without infringement of copyright⁶.

1 Ie within the meaning of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835 et seq.

2 Ie as defined in the Government of Wales Act 1998: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835 et seq.

3 Ie in pursuance of the Public Records Act 1958, the Public Records (Scotland) Act 1937, the Public Records Act (Northern Ireland) 1923 or the Government of Wales Act 1998, as the case may be.

4 For the meaning of 'copy' see PARA 314 ante.

5 Ie under the Public Records Act 1958, the Public Records (Scotland) Act 1937, the Public Records Act (Northern Ireland) 1923 or the Government of Wales Act 1998, as the case may be.

6 Copyright, Designs and Patents Act 1988 s 49 (amended by the Government of Wales Act 1998 s 125, Sch 12 para 27). As to the application of s 49 (as amended) see PARA 337 ante. For the meaning of 'copyright' see PARA 57 ante.

UPDATE

369 Public records

NOTES--Welsh public records are now defined in the Government of Wales Act 2006, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835A ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(vii) Public Administration/370. Acts done under statutory authority.

370. Acts done under statutory authority.

Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright¹. This provision applies in relation to an enactment contained in Northern Ireland legislation as it applies in relation to an Act of Parliament².

Nothing in these provisions is to be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment³.

1 Copyright, Designs and Patents Act 1988 s 50(1). As to the application of s 50 see PARA 337 ante. For the meaning of 'copyright' see PARA 57 ante; and as to infringement of copyright see PARA 311 et seq ante.

2 Ibid s 50(2). 'Northern Ireland legislation' means Acts of the Parliament of Ireland, Acts of the Parliament of Northern Ireland, Orders in Council under the Northern Ireland (Temporary Provisions) Act 1972 s 1(3), Measures of the Northern Ireland Assembly established under the Northern Ireland Assembly Act 1973 s 1, Orders in Council under the Northern Ireland Act 1974 Sch 1, Acts of the Northern Ireland Assembly, and Orders in Council under the Northern Ireland Act 1998 s 85: Interpretation Act 1978 ss 5, 24(5), Sch 1 (s 24(5) amended by the Northern Ireland Act 1998 s 99, Sch 13 para 3). As to the constitutional position of Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 67 et seq.

3 Copyright, Designs and Patents Act 1988 s 50(3). For the meaning of 'enactment' see PARA 55 note 4 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(viii) Computer Programs/371. Back-up copies.

(viii) Computer Programs

371. Back-up copies.

It is not an infringement of copyright¹ for a lawful user² of a copy³ of a computer program to make any back-up copy of it which it is necessary for him to have for the purposes of his lawful use⁴.

Where an act is permitted under this provision, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act, such terms being⁵ void⁶.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 A person is a lawful user of a computer program if, whether under a licence to do any acts restricted by the copyright in the program or otherwise, he has a right to use the program: Copyright, Designs and Patents Act 1988 s 50A(2) (s 50A added by the Copyright (Computer Programs) Regulations 1992, SI 1992/3233, regs 2, 8, 12(2); and the Copyright, Designs and Patents Act 1988 s 50A(2) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 15(2)). For the meaning of 'acts restricted by the copyright' see PARA 311 ante.

3 For the meaning of 'copy' see PARA 314 ante.

4 Copyright, Designs and Patents Act 1988 s 50A(1) (as added: see note 2 supra). As to the application of s 50A (as added) see PARA 337 ante.

5 Ie by virtue of ibid s 296A (as added): see PARA 374 post.

6 Ibid s 50A(3) (as added: see note 2 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/(2. COPYRIGHT/(9) PERMITTED ACTS/(viii) Computer Programs/372. Decompilation.

372. Decompilation.

It is not an infringement of copyright¹ for a lawful user² of a copy³ of a computer program expressed in a low level language:

- 437 (1) to convert it into a version expressed in a higher level language⁴; or
- 438 (2) incidentally in the course of so converting the program, to copy it⁵,

(that is, to 'decompile' it), provided that the following conditions are met⁶. The conditions are that:

- 439 (a) it is necessary to decompile the program to obtain the information necessary to create an independent program which can be operated with the program decompiled or with another program ('the permitted objective')⁷; and
- 440 (b) the information so obtained is not used for any purpose other than the permitted objective⁸.

In particular, the conditions in heads (a) and (b) above are not met if the lawful user:

- 441 (i) has readily available to him the information necessary to achieve the permitted objective⁹;
- 442 (ii) does not confine the decompiling to such acts as are necessary to achieve the permitted objective¹⁰;
- 443 (iii) supplies the information obtained by the decompiling to any person to whom it is not necessary to supply it in order to achieve the permitted objective¹¹; or
- 444 (iv) uses the information to create a program which is substantially similar in its expression to the program decompiled or to do any act restricted by copyright¹².

Where an act is permitted under these provisions, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act, such terms being¹³ void¹⁴.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 For the meaning of 'lawful user of a computer program' see PARA 371 note 2 ante.

3 For the meaning of 'copy' see PARA 314 ante.

4 Copyright, Designs and Patents Act 1988 s 50B(1)(a) (s 50B added by the Copyright (Computer Programs) Regulations 1992, SI 1992/3233, regs 2, 8, 12(2)). As to the application of the Copyright, Designs and Patents Act 1988 s 50B (as added) see PARA 337 ante.

5 Ibid s 50B(1)(b) (as added: see note 4 supra).

6 Ibid s 50B(1) (as added: see note 4 supra).

7 Ibid s 50B(2)(a) (as added: see note 4 supra).

8 Ibid s 50B(2)(b) (as added: see note 4 supra).

- 9 Ibid s 50B(3)(a) (as added: see note 4 supra).
- 10 Ibid s 50B(3)(b) (as added: see note 4 supra).
- 11 Ibid s 50B(3)(c) (as added: see note 4 supra).
- 12 Ibid s 50B(3)(d) (as added: see note 4 supra). For the meaning of 'acts restricted by the copyright' see PARA 311 ante.
- 13 Ie by virtue of ibid s 296A (as added): see PARA 374 post.
- 14 Ibid s 50B(4) (as added: see note 4 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(viii) Computer Programs/373. Observing, studying and testing of computer programs.

373. Observing, studying and testing of computer programs.

It is not an infringement of copyright¹ for a lawful user² of a copy³ of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do⁴.

Where an act is permitted under this provision, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act, such terms being⁵ void⁶.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 For the meaning of 'lawful user of a computer program' see PARA 371 note 2 ante.

3 For the meaning of 'copy' see PARA 314 ante.

4 Copyright, Designs and Patents Act 1988 s 50BA(1) (s 50BA added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 15(1)). As to the application of the Copyright, Designs and Patents Act 1988 s 50BA (as added) see PARA 337 ante.

5 Ie by virtue of ibid s 296A (as added): see PARA 374 post.

6 Ibid s 50BA(2) (as added: see note 4 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(viii) Computer Programs/374.
Avoidance of certain terms.

374. Avoidance of certain terms.

Where a person has the use of a computer program under an agreement, any term or condition in the agreement is void in so far as it purports to prohibit or restrict:

- 445 (1) the making of any back-up copy of the program which it is necessary for him to have for the purposes of the agreed use¹;
- 446 (2) where the specified conditions² are met, the decompiling³ of the program⁴; or
- 447 (3) the observing, studying or testing of the functioning of the program in accordance with the provisions⁵ permitting this⁶.

1 Copyright, Designs and Patents Act 1988 s 296A(1)(a) (s 296A added by the Copyright (Computer Programs) Regulations 1992, SI 1992/3233, regs 2, 11, 12(2)).

2 Ie the conditions in the Copyright, Designs and Patents Act 1988 s 50B(2) (as added): see PARA 372 ante.

3 For the meaning of 'decompile' see PARA 372 ante; definition applied by ibid s 296A(2) (as added: see note 1 supra).

4 Ibid s 296A(1)(b) (as added: see note 1 supra).

5 Ie ibid s 50BA (as added): see PARA 373 ante.

6 Ibid s 296A(1)(c) (as added (see note 1 supra); and substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 15(4)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(viii) Computer Programs/375. Other acts permitted to lawful users.

375. Other acts permitted to lawful users.

It is not an infringement of copyright¹ for a lawful user² of a copy³ of a computer program to copy or adapt⁴ it, provided that the copying or adapting:

- 448 (1) is necessary for his lawful use⁵; and
- 449 (2) is not prohibited under any term or condition of an agreement regulating the circumstances in which his use is lawful⁶.

It may, in particular, be necessary for the lawful use of a computer program to copy it or adapt it for the purpose of correcting errors in it⁷.

These provisions do not apply to any copying or adapting permitted under the provisions relating to back-up copies⁸, decompilation⁹ or the observing, studying and testing¹⁰ of computer programs¹¹.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 For the meaning of 'lawful user of a computer program' see PARA 371 note 2 ante.

3 For the meaning of 'copy' see PARA 314 ante.

4 For the meaning of 'adaptation' in relation to a computer program see PARA 327 ante.

5 Copyright, Designs and Patents Act 1988 s 50C(1)(a) (s 50C added by the Copyright (Computer Programs) Regulations 1992, SI 1992/3233, regs 2, 8, 12(2)). As to the application of the Copyright, Designs and Patents Act 1988 s 50C (as added) see PARA 337 ante. In relation to computer programs, the provisions of ss 50A-50C (as added) make it clear that there is no spare parts defence or any analogous defence: *Mars UK Ltd v Teknowledge Ltd* [1999] IP & T 26, [1999] All ER (D) 600. As to the general repairs and spare parts defence see PARA 406 post.

6 Copyright, Designs and Patents Act 1988 s 50C(1)(b) (as added: see note 5 supra).

7 Ibid s 50C(2) (as added: see note 5 supra).

8 Ie ibid s 50A (as added): see PARA 371 ante.

9 Ie ibid s 50B (as added): see PARA 372 ante.

10 Ie ibid s 50BA (as added): see PARA 373 ante.

11 Ibid s 50C(3) (as added (see note 5 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 15(3)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(ix) Designs/376. Design documents and models.

(ix) Designs

376. Design documents and models.

It is not an infringement of any copyright¹ in a design document² or model recording or embodying a design for anything other than an artistic work³ or a typeface⁴ to make an article to the design or to copy⁵ an article made to the design⁶.

Nor is it an infringement of the copyright to issue to the public, or include in a film⁷, or communicate to the public⁸, anything the making of which was⁹ not an infringement of that copyright¹⁰.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 'Design document' means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise; and 'design' means the design of any aspect of the shape or configuration, whether internal or external, of the whole or part of an article, other than surface decoration: Copyright, Designs and Patents Act 1988 s 51(3). For the meaning of 'photograph' see PARA 77 ante. Circuit diagrams are design documents: *Mackie Designs Inc v Behringer Specialised Studio Equipment (UK) Ltd* [1999] RPC 717, [1999] All ER (D) 411.

3 For the meaning of 'artistic work' see PARA 75 ante.

4 For the meaning of 'typeface' see PARA 381 note 3 post.

5 For the meaning of 'copy' see PARA 314 ante.

6 Copyright, Designs and Patents Act 1988 s 51(1). As to the application of s 51 (as amended) see PARA 337 ante. The concluding words of s 51(1) relate to any act of copying the article whatever the result of the copying: *Mackie Designs Inc v Behringer Specialised Studio Equipment (UK) Ltd* [1999] RPC 717, [1999] All ER (D) 411. See also *Lambretta Clothing Co Ltd v Teddy Smith (UK) Ltd* [2004] EWCA Civ 886, [2005] IP & T 609, [2005] RPC 88; *Jo-Y-Jo Ltd v Matalan Retail Ltd (formerly Matalan Discount Club (Cash & Carry) Ltd)* [1999] All ER (D) 374. As to design right see PARA 501 et seq post.

7 For the meaning of 'film' see PARA 86 ante.

8 For the meaning of 'communication to the public' see PARA 326 ante.

9 Ie by virtue of the Copyright, Designs and Patents Act 1988 s 51(1): see the text to notes 1-6 supra.

10 Ibid s 51(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 8(3)). For the purposes of the application of this provision to things made before 1 August 1989, it is to be assumed that it was in force at all material times: Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 14(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(ix) Designs/377. Designs made before 1 August 1989.

377. Designs made before 1 August 1989.

The exception to infringement of copyright¹ in design documents and models² does not apply until after 31 July 1999³ in relation to a design⁴ recorded or embodied in a design document or model before 1 August 1989⁵; but during the period between 1 August 1994 and 31 July 1999 inclusive, or during so much of that period during which copyright subsists, the provisions as to the availability of licences of right in relation to design right⁶ apply to any relevant copyright as in relation to design right⁷. Accordingly, licences of right are available under the copyrights protecting the designs⁸, the terms of which may, in default of agreement, be settled by the comptroller⁹.

If, in proceedings for infringement of the copyright in a design document or model, the defendant undertakes to take a licence of right, no injunction may be granted against him, no order for delivery up¹⁰ may be made and the amount recoverable against him by way of damages must not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement¹¹.

Where a licence of right is available by virtue of these provisions, a person to whom a licence was granted before 1 August 1989 may apply to the comptroller for an order adjusting the terms of that licence¹². A licence so granted must relate only to acts which would be permitted¹³ if the design document or model had been made on or after 1 August 1989¹⁴.

The copyright owner may not exercise the right to seize infringing copies¹⁵ in relation to anything to which that right would not apply if the design in question had first been recorded or embodied in a design document or model on or after 1 August 1989¹⁶.

Nothing in the above provisions affects the operation of any rule of law preventing or restricting the enforcement of copyright in relation to a design¹⁷.

1 For the meaning of 'copyright' see PARA 57 ante.

2 I.e. the Copyright, Designs and Patents Act 1988 s 51(1): see PARA 376 ante. For the meaning of 'design document' see PARA 376 note 2 ante.

3 I.e. ten years after the date on which the Copyright, Designs and Patents Act 1988 came into force. As to the commencement of the Copyright, Designs and Patents Act 1988 see PARA 54 ante.

4 For the meaning of 'design' see PARA 376 note 2 ante.

5 Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 19(1). Copyright does not, however, subsist in an artistic work made before 1 June 1957 which at the time when the work was made constituted a design capable of registration under the Registered Designs Act 1949 or under the enactments repealed by that Act, and was used, or intended to be used, as a model or pattern to be multiplied by an industrial process: see the Copyright, Designs and Patents Act 1988 Sch 1 para 6; and PARA 74 ante.

6 I.e. *ibid* ss 237-239 (availability of licences of right): see PARA 548 et seq post.

7 *Ibid* Sch 1 para 19(2)(a), (3). It has been held obiter that these provisions relating to licences of right are compatible with the Agreement on Trade-Related Aspects of Intellectual Property Rights (Marrakesh, 15 April 1994; OJ L336, 23.12.94, p 214) (see PARA 452 post): *Azrak-Hamway International Inc's Licence of Right (Design Right and Copyright) Application* [1997] RPC 134 (where it was also held that the Agreement on Trade-Related Aspects of Intellectual Property Rights was not susceptible to being directly invoked in the courts of member states). See also *Lenzing AG's European Patent (UK)* [1997] RPC 245.

8 Copyright, Designs and Patents Act 1988 Sch 1 para 19(2)(a).

9 Ibid Sch 1 para 19(2)(b). Thus ss 247, 248 (application to comptroller to settle terms of licence of right: see PARAS 568, 572 post) apply: Sch 1 para 19(2)(b). Further, the provisions of ss 249, 250 (appeals and rules: see PARAS 558, 584 post) apply in relation to proceedings brought under or by virtue of Sch 1 para 19 as to proceedings under Pt III (ss 213-264) (as amended) (see PARA 501 et seq post): Sch 1 para 19(6). For the meaning of 'the comptroller' see PARA 548 note 5 post.

10 Ie under ibid s 99: see PARA 420 post.

11 Ibid Sch 1 para 19(4). Where an application to the comptroller has been made in pursuance of such an undertaking, the comptroller will not include a term in the licence for repayment of royalties in the event that some copyrights might be held in the proceedings not to exist or not to have been infringed: *Roger Bance and R Bance & Co Ltd's Licence of Right (Copyright) Application* [1996] RPC 667.

12 Copyright, Designs and Patents Act 1988 Sch 1 para 19(5).

13 Ie under ibid s 51 (as amended): see PARA 376 ante.

14 Ibid Sch 1 para 19(7).

15 Ie the right conferred by ibid s 100: see PARA 421 post.

16 Ibid Sch 1 para 19(8).

17 Ibid Sch 1 para 19(9). It has been held that the 'spare parts' defence enunciated in *British Leyland Motor Corp'n v Armstrong Patents Co Ltd* [1986] AC 577, [1986] 1 All ER 850, HL (see PARA 406 post) is preserved by this provision: *Flogates Ltd v Refco Ltd* (1994) [1996] FSR 935.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(ix) Designs/378. Effect of exploitation of design derived from artistic work.

378. Effect of exploitation of design derived from artistic work.

The following provisions apply where an artistic work¹ has been exploited, by or with the licence of the copyright owner², by:

- 450 (1) making by an industrial process articles³ falling to be treated⁴ as copies⁵ of the work⁶; and
- 451 (2) marketing such articles⁷, in the United Kingdom⁸ or elsewhere⁹.

After the end of the period of 25 years from the end of the calendar year in which such articles are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work¹⁰.

The Secretary of State¹¹ may by order make provision:

- 452 (a) as to the circumstances in which an article, or any description of article, is to be regarded for these purposes as made by an industrial process¹²;
- 453 (b) excluding from the operation of the above provisions such articles of a primarily literary or artistic character as he thinks fit¹³.

An order must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament¹⁴.

1 For the meaning of 'artistic work' see PARA 75 ante.

2 As to the licence of the copyright owner see PARAS 121, 175 notes 4, 6 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

3 For these purposes, references to articles do not include films: Copyright, Designs and Patents Act 1988 s 52(6)(a). For the meaning of 'film' see PARA 86 ante.

4 Ie for the purposes of ibid Pt I (ss 1-179) (as amended).

5 For the meaning of 'copies' see PARA 314 ante.

6 Copyright, Designs and Patents Act 1988 s 52(1)(a). As to the application of s 52 see PARA 337 ante.

7 References to the marketing of an article are references to its being sold or let for hire or offered or exposed for sale or hire: ibid s 52(6)(b). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante.

8 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

9 Copyright, Designs and Patents Act 1988 s 52(1)(b).

10 Ibid s 52(2). Where only part of an artistic work is exploited, as mentioned in s 52(1) (see the text to notes 1-9 supra), s 52(2) applies only in relation to that part: s 52(3).

11 As to the Secretary of State see PARA 183 note 2 ante.

12 Copyright, Designs and Patents Act 1988 s 52(4)(a). An article is to be regarded for the purposes of s 52 as made by an industrial process if: (1) it is one of more than 50 articles which all fall to be treated for the purposes of Pt I (as amended) as copies of a particular artistic work but do not all together constitute a single set of articles as defined in the Registered Designs Act 1949 s 44(1) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 743); or (2) it consists of goods manufactured in lengths or pieces, not being hand-made goods: Copyright (Industrial Process and Excluded Articles) (No 2) Order 1989, SI 1989/1070, art 2.

13 Copyright, Designs and Patents Act 1988 s 52(4)(b). There are excluded from the operation of the Copyright, Designs and Patents Act 1988 s 52: (1) works of sculpture, other than casts or models used or intended to be used as models or patterns to be multiplied by any industrial process; (2) wall plaques, medals and medallions; and (3) printed matter primarily of a literary or artistic character, including book jackets, calendars, certificates, coupons, dress-making patterns, greetings cards, labels, leaflets, maps, plans, playing cards, postcards, stamps, trade advertisements, trade forms and cards, transfers and similar articles: Copyright (Industrial Process and Excluded Articles) (No 2) Order 1989, SI 1989/1070, art 3(1). Nothing in art 2 (see note 12 supra) is to be taken to limit the meaning of 'industrial process' in art 3(1)(a) (see head (1) supra): art 3(2).

14 Copyright, Designs and Patents Act 1988 s 52(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(ix) Designs/379. Artistic works made before 1 August 1989.

379. Artistic works made before 1 August 1989.

Where under the Copyright Act 1956 copyright subsisted in an artistic work¹ at any time before 1 August 1989², and a corresponding design³ had been applied industrially⁴ by or with the licence of the owner of the copyright⁵ in the work and articles to which the design had been so applied were sold, let for hire, or offered for sale or hire, whether in the United Kingdom⁶ or elsewhere, then, after the end of the period of 15 years from the date on which such articles were first sold, let for hire, or offered for sale or hire, whether in the United Kingdom or elsewhere, the work may be copied by making articles of any description, or anything may be done for the purposes of making articles of any description in relation to articles so made, without infringing copyright in the work⁷.

Except as provided above, the exception as to industrially exploited designs derived from artistic works⁸ applies only where articles are marketed in the United Kingdom or elsewhere by or with the licence of the copyright owner on or after 1 August 1989⁹.

1 As to the subsistence of copyright in artistic works under the Copyright Act 1956 (repealed) see PARA 41 ante.

2 As to the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

3 For these purposes, 'corresponding design', in relation to an artistic work, means a design which, when applied to an article, results in a reproduction of that work: Copyright Act 1956 s 10(7) (applied by the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 20(1); repealed). For these purposes, 'design' has the same meaning as in the Registered Designs Act 1949 (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 740): see the Copyright Act 1956 s 10(3) (substituted by the Design Copyright Act 1968 s 1(1); repealed). Designs which are totally functional are not within the meaning of 'design' in the Registered Designs Act 1949 (*Amp Inc v Utilux Pty Ltd* [1972] RPC 103, HL) and are consequently excluded from the ambit of the Copyright Act 1956 s 10 (as amended; repealed). As to designs excluded from registration under the Registered Designs Act 1949 see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 744. In addition, certain designs of a primarily literary or artistic character were excluded from registration under the Registered Designs Act 1949 by the Design Rules 1949, SI 1949/2368, r 26 (revoked), which in all material respects is the same as the Registered Designs Rules 1989, SI 1989/1105, r 26 (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 743).

4 The Copyright (Industrial Designs) Rules 1957, SI 1957/867, r 1 (revoked) provided that a design was taken to have been applied industrially if it had been applied to more than 50 articles all of which did not together constitute a single set of articles as defined in the Registered Designs Act 1949 s 44(1) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 743) or to goods manufactured in lengths or pieces, other than hand-made goods. Cf the Copyright (Industrial Process and Excluded Articles (No 2) Order 1989, SI 1989/1070, art 2 (see PARA 378 note 12 ante).

5 As to who is the owner of the copyright in a work made under the Copyright Act 1956 (repealed) see PARA 123 et seq ante.

6 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

7 Copyright, Designs and Patents Act 1988 Sch 1 para 20(1). This applies the provisions of s 52 (see PARA 378 ante) to artistic works to which at any time before 1 August 1989 the provisions of the Copyright Act 1956 s 10 (amended by the Design Copyright Act 1968 s 1(1); repealed) applied with the substitution for the period of 25 years there mentioned of the relevant period of 15 years as defined in the Copyright Act 1956 s 10(3) (as so amended; repealed).

Copyright does not, however, subsist in an artistic work made before 1 June 1957 which at the time when the work was made constituted a design capable of registration under the Registered Designs Act 1949 or under the enactments repealed by that Act, and was used, or intended to be used, as a model or pattern to be

multiplied by an industrial process: see the Copyright, Designs and Patents Act 1988 Sch 1 para 6; and PARA 74 ante.

8 le the exception in *ibid* s 52: see PARA 378 ante.

9 *Ibid* Sch 1 para 20(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(ix) Designs/380. Things done in reliance on registration of design.

380. Things done in reliance on registration of design.

The copyright¹ in an artistic work² is not infringed³ by anything done:

- 454 (1) in pursuance of an assignment or licence⁴ made or granted by a person registered under the Registered Designs Act 1949 as the proprietor⁵ of a corresponding design⁶; and
- 455 (2) in good faith in reliance on the registration and without notice of any proceedings for the cancellation or invalidation of the registration⁷ or for rectifying the relevant entry⁸ in the register of designs⁹,

and this is so notwithstanding that the person registered as the proprietor was not the proprietor of the design for the purposes of the Registered Designs Act 1949¹⁰.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'artistic work' see PARA 75 ante.

3 As to infringement of copyright see PARA 311 et seq ante.

4 As to assignments and licences of registered designs see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 723et seq.

5 As to who is the proprietor of a registered design, and as to registration generally, see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARAS 681 et seq, 722 et seq.

6 Copyright, Designs and Patents Act 1988 s 53(1)(a). As to the application of s 53 (as amended) see PARA 337 ante. 'Corresponding design', in relation to an artistic work, means a design within the meaning of the Registered Designs Act 1949 (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 740 et seq) which, if applied to an article, would produce something which would be treated for the purposes of the Copyright, Designs and Patents Act 1988 Pt 1 (ss 1-179) (as amended) as a copy of the artistic work: s 53(2). For the meaning of 'copy' see PARA 314 ante.

7 As to cancellation or invalidation of a registration see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 757 et seq.

8 As to rectification of an entry in the register see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 720.

9 Copyright, Designs and Patents Act 1988 s 53(1)(b) (amended by the Registered Designs Regulations 2001, SI 2001/3949, reg 9(1), Sch 1 para 16).

10 Copyright, Designs and Patents Act 1988 s 53(1).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(x) Typefaces/381. Use of typeface in ordinary course of printing.

(x) Typefaces

381. Use of typeface in ordinary course of printing.

It is not an infringement of copyright¹ in an artistic work² consisting of the design of a typeface³:

- 456 (1) to use the typeface in the ordinary course of typing, composing text, typesetting or printing⁴;
- 457 (2) to possess an article for the purpose of such use⁵; or
- 458 (3) to do anything in relation to material produced by such use⁶,

and this is so notwithstanding that an article is used which is an infringing copy⁷ of the work⁸.

However, the following provisions apply in relation to persons making, importing or dealing with⁹ articles specifically designed or adapted for producing material in a particular typeface, or possessing such articles for the purpose of dealing with them, as if the production of material as mentioned in the above provisions did infringe copyright in the artistic work consisting of the design of the typeface:

- 459 (a) those relating to secondary infringement and the making, importing, possessing or dealing with an article for making an infringing copy¹⁰;
- 460 (b) those relating to orders for delivery up and the right of seizure¹¹;
- 461 (c) those relating to the offence of making or possessing such an article¹²; and
- 462 (d) those¹³ relating to orders for delivery up in criminal proceedings¹⁴.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 For the meaning of 'artistic work' see PARA 75 ante.

3 'Typeface' includes an ornamental motif used in printing: Copyright, Designs and Patents Act 1988 s 178.

4 Ibid s 54(1)(a). As to the application of s 54 see PARA 337 ante.

5 Ibid s 54(1)(b).

6 Ibid s 54(1)(c).

7 For the meaning of 'infringing copy' see PARA 335 ante.

8 Copyright, Designs and Patents Act 1988 s 54(1).

9 For these purposes, the references to 'dealing with' an article are references to selling, letting for hire, offering or exposing for sale or hire, exhibiting in public, or distributing: ibid s 54(3). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante.

10 Ie ibid s 24: see PARA 331 ante.

11 Ie ibid s 99 (see PARA 420 post) and s 100 (see PARA 421 post).

12 Ie ibid s 107(2): see PARA 437 post.

13 Ie ibid s 108: see PARA 440 post.

14 Ibid s 54(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(x) Typefaces/382. Articles for producing material in particular typeface.

382. Articles for producing material in particular typeface.

The following provisions apply to the copyright¹ in an artistic work² consisting of the design of a typeface³ where articles specifically designed or adapted for producing material in that typeface have been marketed⁴ by or with the licence of the copyright owner⁵.

After the period of 25 years from the end of the calendar year in which the first such articles are marketed, the work may be copied⁶ by making further such articles, or doing anything for the purpose of making such articles, and anything may be done in relation to articles so made, without infringing copyright in the work⁷.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'artistic work' see PARA 75 ante.

3 For the meaning of 'typeface' see PARA 381 note 3 ante.

4 'Marketed' means sold, let for hire, or offered or exposed for sale or hire, in the United Kingdom or elsewhere: Copyright, Designs and Patents Act 1988 s 55(3). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante. For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

5 Ibid s 55(1). As to the application of s 55 see PARA 337 ante. As to the licence of the copyright owner see PARAS 121, 175 notes 4, 6 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

6 For the meaning of 'copied' see PARA 314 ante.

7 Copyright, Designs and Patents Act 1988 s 55(2). The Copyright, Designs and Patents Act 1988 provides that s 55 applies where articles have been marketed as mentioned in s 55(1) (see the text and notes 1-5 supra) before 1 August 1989 with the substitution for the period mentioned in s 55(3) of the period of 25 years from 31 December 1989: s 170, Sch 1 para 14(5). It is submitted that this reference to s 55(3) should be a reference to s 55(2), there being no period mentioned in s 55(3) (see note 4 supra). As to infringement of copyright see PARA 311 et seq ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xi) Works in Electronic Form/383. Transfers of copies of works in electronic form.

(xi) Works in Electronic Form

383. Transfers of copies of works in electronic form.

The following provisions apply where a copy¹ of a work in electronic form² has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work, or to adapt it or make copies of an adaptation³, in connection with his use of it⁴.

If there are no express terms:

- 463 (1) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer⁵; or
- 464 (2) providing for the terms on which a transferee may do the things which the purchaser was permitted to do⁶,

anything which the purchaser was allowed to do may also be done without infringement of copyright⁷ by a transferee; but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred is treated as an infringing copy⁸ for all purposes after the transfer⁹. The same applies where the original purchased copy is no longer usable and what is transferred is a further copy used in its place¹⁰.

The above provisions also apply on a subsequent transfer, with the substitution for references¹¹ to the purchaser of references to the subsequent transferor¹².

1 For the meaning of 'copy' see PARA 314 ante.

2 For the meaning of 'in electronic form' see PARA 184 note 2 ante.

3 For the meaning of 'adaptation' see PARA 327 ante.

4 Copyright, Designs and Patents Act 1988 s 56(1). Section 56 does not apply in relation to a copy purchased before 1 August 1989: s 170, Sch 1 para 14(6). As to the application of s 56 see also PARA 337 ante.

5 Ibid s 56(2)(a).

6 Ibid s 56(2)(b).

7 For the meaning of 'copyright' see PARA 57 ante.

8 For the meaning of 'infringing copy' see PARA 335 ante.

9 Copyright, Designs and Patents Act 1988 s 56(2).

10 Ibid s 56(3).

11 Ie in ibid s 56(2): see the text to notes 7-9 supra.

12 Ibid s 56(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xii) Miscellaneous Literary, Dramatic, Musical and Artistic Works/384. Anonymous or pseudonymous works; acts permitted on assumptions as to expiry of copyright or death of author.

(xii) Miscellaneous Literary, Dramatic, Musical and Artistic Works

384. Anonymous or pseudonymous works; acts permitted on assumptions as to expiry of copyright or death of author.

Copyright¹ in a literary², dramatic³, musical⁴ or artistic⁵ work is not infringed⁶ by an act done at a time when, or in pursuance of arrangements made at a time when:

- 465 (1) it is not possible by reasonable inquiry to ascertain the identity of the author⁷;
and
- 466 (2) it is reasonable to assume:
15
- 19. (a) that copyright has expired⁸; or
- 20. (b) that the author died 70 years or more before the beginning of the calendar
year in which the act is done or the arrangements are made⁹.
- 16

Head (2)(b) above does not apply in relation to a work in which Crown copyright subsists¹⁰, or a work in which copyright originally vested¹¹ in an international organisation¹² and in respect of which an Order in Council¹³ specifies a copyright period longer than 70 years¹⁴.

In relation to a work of joint authorship¹⁵:

- 467 (i) the reference in head (1) above to its being possible to ascertain the identity of the author is to be construed as a reference to its being possible to ascertain the identity of any of the authors¹⁶; and
- 468 (ii) the reference in head (2)(b) above to the author having died is to be construed as a reference to all the authors having died¹⁷.

1 For the meaning of 'copyright' see PARA 57 ante. The Copyright, Designs and Patents Act 1988 s 57 (as amended) does not apply to publication right: see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(a); and PARA 500 post. As to the application of the Copyright, Designs and Patents Act 1988 s 57 (as amended) see also PARA 337 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 As to infringement of copyright see PARA 311 et seq ante.

7 Copyright, Designs and Patents Act 1988 s 57(1)(a). For the meaning of 'author' see PARA 110 ante.

8 Ibid s 57(1)(b)(i). As to the duration of copyright see PARA 93 et seq ante. Section 57 (as amended) has effect in relation to works made before 1 August 1989 subject to the following modification, namely that s 57(1)(b)(i) (see head (2)(a) in the text) does not apply in relation to photographs or the rights mentioned in Sch 1

para 13 (rights conferred by the Copyright Act 1775: see PARA 6 ante): Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 15(1), (2). For the meaning of 'photograph' see PARA 77 ante.

9 Ibid s 57(1)(b)(ii) (amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 5(2)). Where copyright in a work made before 1 January 1996 continues to subsist until the date on which it would have expired under the Copyright, Designs and Patents Act 1988 (as originally enacted), if that date is later than the date on which copyright would expire under that Act as amended, then s 57(1) applies as it applied immediately before 1 January 1996, ie without the amendments made by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 5(2): reg 15(1), (2). See also PARA 101 ante.

10 Copyright, Designs and Patents Act 1988 s 57(2)(a). For the meaning of 'Crown copyright' see PARA 144 ante.

11 Ie by virtue of ibid s 168: see PARA 155 ante.

12 For the meaning of 'international organisation' see PARA 155 note 8 ante.

13 Ie under the Copyright, Designs and Patents Act 1988 s 168: see PARA 155 ante.

14 Ibid s 57(2)(b) (amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 5(2)).

15 For the meaning of 'work of joint authorship' see PARA 113 ante.

16 Copyright, Designs and Patents Act 1988 s 57(3)(a).

17 Ibid s 57(3)(b).

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385. Use of notes or recordings of spoken words in certain cases.

Where a record¹ of spoken words is made, in writing² or otherwise, for the purpose:

- 469 (1) of reporting current events³; or
- 470 (2) of communicating to the public⁴ the whole or part of the work⁵,

it is not an infringement of any copyright⁶ in the words as a literary work⁷ to use the record or material taken from it, or to copy⁸ the record or any such material, and use the copy for that purpose, provided that the following conditions are met⁹.

The conditions are that:

- 471 (a) the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast¹⁰;
- 472 (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright¹¹;
- 473 (c) the use made of the record or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner¹² before the record was made¹³; and
- 474 (d) the use is by or with the authority of a person who is lawfully in possession of the record¹⁴.

1 As to the copyright in such a record see PARA 66 ante. This type of copyright is sometimes referred to as the reporter's copyright as distinct from the speaker's copyright in the actual words spoken. For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'writing' see PARA 66 note 5 ante.

3 Copyright, Designs and Patents Act 1988 s 58(1)(a). As to the exception in relation to infringement of copyright in the case of fair dealing for the purpose of reporting current events see PARAS 339-340 ante. As to the application of s 58 (as amended) see PARA 337 ante.

4 For the meaning of 'communication to the public' see PARA 326 ante.

5 Copyright, Designs and Patents Act 1988 s 58(1)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 12(a)).

6 As to infringement of copyright see PARA 311 et seq ante.

7 For the meaning of 'literary work' see PARA 67 ante.

8 For the meaning of 'copy' see PARA 314 ante.

9 Copyright, Designs and Patents Act 1988 s 58(1).

10 Ibid s 58(2)(a) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). For the meaning of 'broadcast' see PARA 89 ante.

11 Copyright, Designs and Patents Act 1988 s 58(2)(b).

12 As to who is the owner of the copyright in a work see PARA 118 et seq ante. The speaker may not own the copyright in the words spoken by him if eg he was an employee employed to speak them: see PARA 118 et seq ante.

13 Copyright, Designs and Patents Act 1988 s 58(2)(c).

14 Ibid s 58(2)(d).

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386. Public reading or recitation.

The reading or recitation in public by one person of a reasonable extract from a published¹ literary² or dramatic³ work does not infringe any copyright⁴ in the work if it is accompanied by a sufficient acknowledgment⁵.

Copyright in a work is not infringed by the making of a sound recording⁶, or communication to the public⁷, of a reading or recitation which by virtue of the above provision does not infringe copyright in the work, provided that the recording or communication to the public consists mainly of material in relation to which it is not necessary to rely on that provision⁸.

1 For the meaning of 'published' see PARA 63 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

5 Copyright, Designs and Patents Act 1988 s 59(1). As to the application of s 59 (as amended) see PARA 337 ante. For the meaning of 'sufficient acknowledgement' see PARA 338 note 7 ante.

6 For the meaning of 'sound recording' see PARA 84 ante.

7 For the meaning of 'communication to the public' see PARA 326 ante.

8 Copyright, Designs and Patents Act 1988 s 59(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 5(b), 9(1)(a)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xii) Miscellaneous Literary, Dramatic, Musical and Artistic Works/387. Abstracts of scientific or technical articles.

387. Abstracts of scientific or technical articles.

Where an article¹ on a scientific or technical subject is published² in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of copyright³ in the abstract, or in the article, to copy⁴ the abstract or issue copies of it to the public⁵. This provision does not apply if, or to the extent that, there is a licensing scheme certified⁶ for these purposes providing for the grant of licences⁷.

1 For the meaning of 'article' see PARA 356 note 5 ante.

2 For the meaning of 'published' see PARA 63 ante.

3 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

4 For the meaning of 'copy' see PARA 314 ante.

5 Copyright, Designs and Patents Act 1988 s 60(1). As to the application of s 60 see PARA 337 ante. For the meaning of 'issue copies to the public' see PARA 322 ante.

6 Is certified under ibid s 143: see PARA 183 ante. For the meaning of 'licensing scheme' see PARA 224 ante.

7 Ibid s 60(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/(9) PERMITTED ACTS/(xii) Miscellaneous Literary, Dramatic, Musical and Artistic Works/388. Recordings of folksongs.

388. Recordings of folksongs.

A sound recording¹ of a performance² of a song may be made for the purpose of including it in an archive maintained by a designated body³ without infringing any copyright⁴ in the words as a literary work⁵ or in the accompanying musical work⁶, provided that the following conditions are met⁷. The conditions are that:

- 475 (1) the words are unpublished⁸ and of unknown authorship⁹ at the time the recording is made¹⁰;
- 476 (2) the making of the recording does not infringe any other copyright¹¹; and
- 477 (3) its making is not prohibited by any performer¹².

Copies¹³ of a sound recording made in reliance on these provisions and included in an archive maintained by a designated body may, if the prescribed¹⁴ conditions are met, be made and supplied by the archivist¹⁵ without infringing copyright in the recording or the works included in it¹⁶. The prescribed conditions must include the following:

- 478 (a) that copies are only supplied to persons satisfying the archivist that they require them for the purposes of research for a non-commercial purpose¹⁷, or private study¹⁸, and will not use them for any other purpose¹⁹; and
- 479 (b) that no person is furnished with more than one copy of the same recording²⁰.

1 For the meaning of 'sound recording' see PARA 84 ante.

2 For the meaning of 'performance' see PARA 324 ante.

3 'Designated' means designated for the purposes of the Copyright, Designs and Patents Act 1988 s 61 (as amended) by order of the Secretary of State, who must not designate a body unless satisfied that it is not established or conducted for profit: s 61(5)(a). An order under s 61 (as amended) must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 61(6). As to the Secretary of State see PARA 183 note 2 ante.

The bodies designated for the purposes of s 61 (as amended) are: the Archive of Traditional Welsh Music, University College of North Wales; the Centre for English Cultural Tradition and Language; the Charles Parker Archive Trust (1982); the European Centre for Traditional and Regional Cultures; the Folklore Society; the Institute of Folklore Studies in Britain and Canada; the National Museum of Wales, Welsh Folk Museum; the National Sound Archive, the British Library; the North West Sound Archive; the Sound Archives, British Broadcasting Corporation; the Ulster Folk and Transport Museum; and the Vaughan Williams Memorial Library, English Folk Dance and Song Society: Copyright (Recordings of Folksongs for Archives) (Designated Bodies) Order 1989, SI 1989/1012, art 2, Schedule.

4 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

5 For the meaning of 'literary work' see PARA 67 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 Copyright, Designs and Patents Act 1988 s 61(1). As to the application of s 61 (as amended) see PARA 337 ante.

8 For the meaning of 'unpublished' see PARA 63 ante.

9 For the meaning of 'unknown authorship' see PARA 114 ante.

10 Copyright, Designs and Patents Act 1988 s 61(2)(a).

11 Ibid s 61(2)(b).

12 Ibid s 61(2)(c). Making a recording without the consent of the performer may also infringe the performer's right and other rights in performances: see PARA 604 et seq post.

13 For the meaning of 'copies' see PARA 314 ante.

14 'Prescribed' means prescribed for the purposes of the Copyright, Designs and Patents Act 1988 s 61 (as amended) by order of the Secretary of State: s 61(5)(b).

15 References to the archivist include a person acting on his behalf: ibid s 61(5)(c).

16 Ibid s 61(3).

17 Ibid s 61(4)(a)(i) (s 61(4)(a) substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 16).

18 Copyright, Designs and Patents Act 1988 s 61(4)(a)(ii) (as substituted: see note 17 supra). For the meaning of 'private study' see PARA 338 note 9 ante.

19 Ibid s 61(4)(a) (as substituted: see note 17 supra). As to the exception in relation to infringement of copyright in the case of fair dealing for the purpose of research or private study see PARAS 338, 340 ante.

20 Ibid s 61(4)(b). The prescribed conditions are: (1) that the person requiring a copy satisfies the archivist that he requires it for purposes of research for a non-commercial purpose or private study and will not use it for any other purpose; and (2) that no person is furnished with more than one copy of the same recording: Copyright (Recordings of Folksongs for Archives) (Designated Bodies) Order 1989, SI 1989/1012, art 3(1), (2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 3 para 24).

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389. Representation of certain artistic works on public display.

The following provisions apply to: (1) buildings¹; and (2) sculptures², models for buildings and works of artistic craftsmanship³, if permanently situated in a public place or in premises open to the public⁴.

The copyright⁵ in such a work is not infringed⁶ by:

- 480 (a) making a graphic work⁷ representing it⁸;
- 481 (b) making a photograph⁹ or film¹⁰ of it¹¹; or
- 482 (c) making a broadcast¹² of a visual image of it¹³.

Nor is the copyright infringed by the issue to the public of copies¹⁴, or the communication to the public¹⁵, of anything whose making was, by virtue of these provisions, not an infringement of the copyright¹⁶.

1 Copyright, Designs and Patents Act 1988 s 62(1)(a). As to the application of s 62 (as amended) see PARA 337 ante. For the meaning of 'building' see PARA 79 ante.

2 For the meaning of 'sculpture' see PARA 78 ante.

3 For the meaning of 'work of artistic craftsmanship' see PARA 80 ante.

4 Copyright, Designs and Patents Act 1988 s 62(1)(b).

5 For the meaning of 'copyright' see PARA 57 ante.

6 As to infringement of copyright see PARA 311 et seq ante.

7 For the meaning of 'graphic work' see PARA 76 ante.

8 Copyright, Designs and Patents Act 1988 s 62(2)(a).

9 For the meaning of 'photograph' see PARA 77 ante.

10 For the meaning of 'film' see PARA 86 ante.

11 Copyright, Designs and Patents Act 1988 s 62(2)(b).

12 For the meaning of 'broadcast' see PARA 89 ante.

13 Copyright, Designs and Patents Act 1988 s 62(2)(c) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 14).

14 For the meaning of 'issue copies to the public' see PARA 322 ante.

15 For the meaning of 'communication to the public' see PARA 326 ante.

16 Copyright, Designs and Patents Act 1988 s 62(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 5(c)). For the purposes of the application of this provision to things made before 1 August 1989, it is to be assumed that it was in force at all material times: Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 14(4).

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390. Advertisement of sale of artistic work.

It is not an infringement of copyright¹ in an artistic work² to copy³ it, or to issue copies to the public⁴, for the purpose of advertising the sale of the work⁵.

Where a copy which would otherwise be an infringing copy⁶ is made in accordance with these provisions but is subsequently dealt with⁷ for any other purpose, it is treated as an infringing copy for the purposes of that dealing, and, if that dealing infringes copyright, for all subsequent purposes⁸.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 For the meaning of 'artistic work' see PARA 75 ante.

3 For the meaning of 'copy' see PARA 314 ante.

4 For the meaning of 'issue copies to the public' see PARA 322 ante.

5 Copyright, Designs and Patents Act 1988 s 63(1). As to the application of s 63 (as amended) see PARA 337 ante.

6 For the meaning of 'infringing copy' see PARA 335 ante.

7 For this purpose 'dealt with' means sold or let for hire, offered or exposed for sale or hire, exhibited in public, distributed or communicated to the public: Copyright, Designs and Patents Act 1988 s 63(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 17). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante.

8 Copyright, Designs and Patents Act 1988 s 63(2).

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391. Making of subsequent works by same artist.

Where the author¹ of an artistic work² is not the copyright owner³, he does not infringe the copyright by copying⁴ the work in making another artistic work, provided that he does not repeat or imitate the main design of the earlier work⁵.

Where the artist has not used any existing model in a second work but, having evolved a particular style in the drawing of certain typical figures, uses it in a second work, after having assigned the first work, no infringement is committed; and it is material in such a case to consider the relation of the figure which has the similarity to the work as a whole⁶.

1 For the meaning of 'author' see PARA 110 ante.

2 For the meaning of 'artistic work' see PARA 75 ante.

3 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 For the meaning of 'copy' see PARA 314 ante.

5 Copyright, Designs and Patents Act 1988 s 64. Section 64 does not apply to publication right: see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(a); and PARA 500 post. As to the application of the Copyright, Designs and Patents Act 1988 s 64 see also PARA 337 ante.

6 *Preston v Raphael Tuck & Sons Ltd* [1926] Ch 667 at 675 per Tomlin J.

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392. Reconstruction of buildings.

Anything done for the purposes of reconstructing a building¹ does not infringe any copyright² in the building or in any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner³, constructed⁴.

1 For the meaning of 'building' see PARA 79 ante.

2 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

3 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 Copyright, Designs and Patents Act 1988 s 65. As to the application of s 65 see PARA 337 ante. In s 65 the reference to the owner of the copyright in the drawings or plans is, in relation to buildings constructed before 1 August 1989, a reference to the person who at the time of the construction was the owner of the copyright in the drawings or plans under the Copyright Act 1956 (repealed), the Copyright Act 1911, or any enactment repealed by the Copyright Act 1911: Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 14(7).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xiii) Lending of Works; Films and Sound Recordings/393. Lending to the public of copies of certain works.

(xiii) Lending of Works; Films and Sound Recordings

393. Lending to the public of copies of certain works.

The Secretary of State¹ may by order provide that, in such cases as may be specified in the order, the lending² to the public of copies³ of literary⁴, dramatic⁵, musical⁶ or artistic⁷ works, sound recordings⁸ or films⁹ is to be treated as licensed by the copyright owner¹⁰ subject only to the payment of such reasonable royalty or other payment as may be agreed or determined, in default of agreement, by the Copyright Tribunal¹¹.

No such order applies if, or to the extent that, there is a certified licensing scheme¹² providing for the grant of licences¹³. An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender or the circumstances of the lending¹⁴. An order must be made by statutory instrument; and no order may be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament¹⁵.

Nothing in these provisions affects any liability, under the provisions relating to secondary infringement¹⁶, in respect of the lending of infringing copies¹⁷.

1 As to the Secretary of State see PARA 183 note 2 ante.

2 For the meaning of 'lending' see PARA 323 ante.

3 For the meaning of 'copies' see PARA 314 ante.

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'dramatic work' see PARA 73 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 For the meaning of 'artistic work' see PARA 75 ante.

8 For the meaning of 'sound recording' see PARA 84 ante.

9 For the meaning of 'film' see PARA 86 ante.

10 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

11 Copyright, Designs and Patents Act 1988 s 66(1) (s 66 substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 11(3)). As to the application of the Copyright, Designs and Patents Act 1988 s 66 (as substituted) see PARA 337 ante. As to the Copyright Tribunal see PARA 207 ante; and as to applications to the Tribunal see PARA 284 et seq ante. At the date at which this volume states the law no order had been made under s 66(1) (as substituted).

12 Is a licensing scheme certified for the purposes of *ibid* s 66 (as substituted) under s 143: see PARA 183 ante. For the meaning of 'licensing scheme' see PARA 224 ante.

13 *Ibid* s 66(2) (as substituted: see note 11 *supra*).

14 *Ibid* s 66(3) (as substituted: see note 11 *supra*).

15 *Ibid* s 66(4) (as substituted: see note 11 *supra*).

16 Ie ibid s 23: see PARA 330 ante.

17 Ibid s 66(5) (as substituted: see note 11 supra). For the meaning of 'infringing copy' see PARA 335 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xiii) Lending of Works; Films and Sound Recordings/394. Films; acts permitted on assumptions as to expiry of copyright etc.

394. Films; acts permitted on assumptions as to expiry of copyright etc.

Copyright¹ in a film² is not infringed³ by an act done at a time when, or in pursuance of arrangements made at a time when:

- 483 (1) it is not possible by reasonable inquiry to ascertain the identity of any of the persons⁴ by reference to whose life the copyright period is ascertained, that is to say, the principal director, the author of the screenplay, the author of the dialogue or the composer of music specially created for and used in the film⁵; and
- 484 (2) it is reasonable to assume:
- 17
21. (a) that copyright has expired⁶; or
22. (b) that the last to die of those persons died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made⁷.
- 18

Head (2)(b) above does not apply in relation to a film in which Crown copyright subsists⁸, or a film in which copyright originally vested⁹ in an international organisation¹⁰ and in respect of which an Order in Council¹¹ specifies a copyright period longer than 70 years¹².

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'film' see PARA 86 ante.

3 As to infringement of copyright see PARA 311 et seq ante.

4 I.e. the persons referred to in the Copyright, Designs and Patents Act 1988 s 13B(2)(a)-(d) (as added): see PARA 98 ante.

5 Ibid s 66A(1)(a) (s 66A added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 6(2)). The Copyright, Designs and Patents Act 1988 s 66A (as added) does not apply to publication right: see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(a); and PARA 500 post. As to the application of the Copyright, Designs and Patents Act 1988 s 66A (as added) see also PARA 337 ante.

6 Ibid s 66A(1)(b)(i) (as added: see note 5 supra). As to the duration of copyright see PARA 93 et seq ante.

7 Ibid s 66A(1)(b)(ii) (as added: see note 5 supra).

8 Ibid s 66A(2)(a) (as added: see note 5 supra). For the meaning of 'Crown copyright' see PARA 144 post.

9 I.e. by virtue of ibid s 168: see PARA 155 ante.

10 For the meaning of 'international organisation' see PARA 155 note 8 ante.

11 I.e. under the Copyright, Designs and Patents Act 1988 s 168: see PARA 155 ante.

12 Ibid s 66A(2)(b) (as added: see note 5 supra).

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395. Playing of sound recordings for purposes of club, society etc.

It is not an infringement of the copyright¹ in a sound recording² to play it as part of the activities of, or for the benefit of, a club, society or other organisation if the following conditions are met³. The conditions are:

- 485 (1) that the organisation is not established or conducted for profit and its main objects are charitable⁴ or are otherwise concerned with the advancement of religion, education or social welfare⁵;
- 486 (2) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain⁶;
- 487 (3) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation⁷; and
- 488 (4) that the proceeds from any goods or services sold by, or on behalf of, the organisation in the place where the sound recording is heard⁸, and on the occasion when the sound recording is played⁹, are applied solely for the purposes of the organisation¹⁰.

1 For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'sound recording' see PARA 84 ante. As to infringement of the copyright in a sound recording by playing it in public see PARAS 324-325 ante.

3 Copyright, Designs and Patents Act 1988 s 67(1). Section 67 (as amended) does not apply to publication right: see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(a); and PARA 500 post. As to the application of the Copyright, Designs and Patents Act 1988 s 67 (as amended) see also PARA 337 ante.

A local authority is not an organisation for the purposes of s 67 (as amended). For it to be so would give far too wide a meaning to the words 'other organisations' which must be construed ejusdem generis with the words 'club' and 'society'; moreover, a local authority's functions are essentially administrative and governmental and not within the ambit of any of the categories in s 67(2)(a) (see head (1) in the text): *Phonographic Performance Ltd v South Tyneside Metropolitan Borough Council* [2001] LGR 176, [2001] RPC 594.

4 As to the meaning of 'charitable' see CHARITIES vol 8 (2010) PARA 1 et seq.

5 Copyright, Designs and Patents Act 1988 s 67(2)(a).

6 Ibid s 67(2)(b) (s 67(2)(b) substituted, and s 67(2)(c)-(d) added, by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 18(1)).

7 Copyright, Designs and Patents Act 1988 s 67(2)(c) (as added: see note 6 supra).

8 Ibid s 67(2)(d)(i) (as added: see note 6 supra).

9 Ibid s 67(2)(d)(ii) (as added: see note 6 supra).

10 Ibid s 67(2)(d) (as added: see note 6 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xiv) Broadcasts/396. Incidental recording for purposes of broadcast.

(xiv) Broadcasts

396. Incidental recording for purposes of broadcast.

The following provisions apply where, by virtue of a licence¹ or assignment² of copyright, a person is authorised to broadcast³ a literary⁴, dramatic⁵ or musical⁶ work, or an adaptation of such a work⁷, an artistic work⁸, or a sound recording⁹ or film¹⁰.

He is to be treated as so licensed by the owner of the copyright¹¹ in the work to do or authorise any of the following for the purposes of the broadcast¹²:

- 489 (1) in the case of a literary, dramatic or musical work, or an adaptation of such a work, to make a sound recording or film of the work or adaptation¹³;
- 490 (2) in the case of an artistic work, to take a photograph¹⁴ or make a film of the work¹⁵;
- 491 (3) in the case of a sound recording or film, to make a copy of it¹⁶.

That licence is subject to the condition that the recording, film, photograph or copy in question: (a) must not be used for any other purpose¹⁷; and (b) must be destroyed within 28 days of being first used for broadcasting the work¹⁸.

A recording, film, photograph or copy made in accordance with these provisions must be treated as an infringing copy¹⁹ for the purposes of any use in breach of the condition mentioned in head (a) above²⁰, and for all purposes after that condition or the condition mentioned in head (b) above is broken²¹.

1 As to licences of copyright see PARA 175 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

2 As to assignment of copyright see PARA 160 et seq ante.

3 Copyright, Designs and Patents Act 1988 s 68(1) (s 68(1)-(3) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). As to the application of s 68 (as amended) see PARA 337 ante. For the meaning of 'broadcast' see PARA 89 ante.

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'dramatic work' see PARA 73 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 Copyright, Designs and Patents Act 1988 s 68(1)(a). For the meaning of 'adaptation' see PARA 327 ante.

8 Ibid s 68(1)(b). For the meaning of 'artistic work' see PARA 75 ante.

9 For the meaning of 'sound recording' see PARA 84 ante.

10 Copyright, Designs and Patents Act 1988 s 68(1)(c). For the meaning of 'film' see PARA 86 ante.

11 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

12 Copyright, Designs and Patents Act 1988 s 68(2) (as amended: see note 3 supra).

13 Ibid s 68(2)(a).

- 14 For the meaning of 'photograph' see PARA 77 ante.
- 15 Copyright, Designs and Patents Act 1988 s 68(2)(b).
- 16 Ibid s 68(2)(c). For the meaning of 'copy' see PARA 314 ante.
- 17 Ibid s 68(3)(a).
- 18 Ibid s 68(3)(b) (as amended: see note 3 supra).
- 19 For the meaning of 'infringing copy' see PARA 335 ante.
- 20 Copyright, Designs and Patents Act 1988 s 68(4)(a).
- 21 Ibid s 68(4)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xiv) Broadcasts/397. Recording for purposes of supervision and control of broadcasts and other services.

397. Recording for purposes of supervision and control of broadcasts and other services.

Copyright is not infringed¹ by the making or use by the British Broadcasting Corporation², for the purpose of maintaining supervision and control over programmes broadcast³ by it, of recordings of those programmes⁴.

Neither is copyright infringed by anything done in pursuance of:

- 492 (1) specified provisions of the Broadcasting Act 1990⁵, the Broadcasting Act 1996⁶ or the Communications Act 2003⁷;
- 493 (2) a condition which is included⁸ in a licence granted under Part I or Part III of the Communications Act 2003 or Part I or Part II of the Broadcasting Act 1996⁹;
- 494 (3) a direction given¹⁰ in respect of the power of OFCOM¹¹ to require production of recordings etc¹²;
- 495 (4) the power¹³ of OFCOM to make and use recordings of programmes or any part of them for the purpose of its supervisory powers¹⁴.

Nor is copyright infringed by the use by OFCOM in connection with the performance of any of its functions under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003¹⁵ of:

- 496 (a) any recording, script or transcript which is provided to it under or by virtue of any provision of those Acts¹⁶; or
- 497 (b) any existing material¹⁷ which is transferred to it by a scheme made¹⁸ under the Communications Act 2003¹⁹.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 As to the British Broadcasting Corporation see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 306 et seq.

3 For the meaning of 'broadcast' see PARA 89 ante.

4 Copyright, Designs and Patents Act 1988 s 69(1). As to the application of s 69 (as amended) see PARA 337 ante.

5 Ie the Broadcasting Act 1990 s 167(1) (power to make copies of recordings): see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 595.

6 Ie the Broadcasting Act 1996 s 115(4) or (6) (fairness complaints) or s 117 (duty to retain recordings): see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARAS 515-516.

7 Copyright, Designs and Patents Act 1988 s 69(2)(a) (s 69(2) substituted by the Broadcasting Act 1996 s 148(1), Sch 10 para 31; and the Copyright, Designs and Patents Act 1988 s 69(2)(a) further substituted by the Communications Act 2003 s 406(1), Sch 17 para 91(1), (2)(a)). The specified provision of the Communications Act 2003 is Sch 12 para 20 (monitoring of programmes by the Welsh Authority).

8 Ie by virtue of ibid s 334(1): see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 292.

9 Copyright, Designs and Patents Act 1988 s 69(2)(b) (s 69(2) as substituted (see note 7 supra); and s 69(2)(b) amended by the Communications Act 2003 s 406(7), Sch 17 para 91(1), (2)(b), Sch 19(1)).

- 10 le under the Broadcasting Act 1990 s 109(2): see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 471.
- 11 As to OFCOM see TELECOMMUNICATIONS vol 97 (2010) PARA 2 et seq.
- 12 Copyright, Designs and Patents Act 1988 s 69(2)(c) (s 69(2) as substituted (see note 7 supra); and s 69(2)(c) amended by the Communications Act 2003 Sch 17 para 91(1), (2)(c)).
- 13 le under the Communications Act 2003 s 334(3): see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 292.
- 14 Copyright, Designs and Patents Act 1988 s 69(2)(d) (s 69(2) as substituted (see note 7 supra); and s 69(2)(d) added by the Communications Act 2003 Sch 17 para 91(1), (2)(d)).
- 15 As to such functions see TELECOMMUNICATIONS vol 97 (2010) PARA 14 et seq.
- 16 Copyright, Designs and Patents Act 1988 s 69(3)(a) (s 69(3) substituted, and s 69(4) added, by the Communications Act 2003 Sch 17 para 91(1), (3)).
- 17 'Existing material' means: (1) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996; and (2) any recording or transcript which was provided to the Broadcasting Standards Commission under the Broadcasting Act 1996 s 115(4) or (6) or s 116(5) (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 497); Copyright, Designs and Patents Act 1988 s 69(4) (as added: see note 16 supra). As to the transfer to OFCOM of the functions of the Independent Television Commission, the Radio Authority and the Broadcasting Standards Commission see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARAS 328, 439, 510.
- 18 le under the Communications Act 2003 s 30: see TELECOMMUNICATIONS vol 97 (2010) PARA 38 et seq.
- 19 Copyright, Designs and Patents Act 1988 s 69(3)(b) (as substituted: see note 16 supra).

UPDATE

397 Recording for purposes of supervision and control of broadcasts and other services

TEXT AND NOTES--Copyright is not infringed by the use by an appropriate regulatory authority designated under the Communications Act 2003 s 368B in connection with the performance of any of its functions under the 2003 Act, of any recording, script or transcript which is provided to it under or by virtue of any provision of the 2003 Act: Copyright, Designs and Patents Act 1988 s 69(5) (added by SI 2009/2979).

NOTES 3, 14--Copyright, Designs and Patents Act 1988 s 69(1), (2)(d) amended, s 69(6) added: SI 2009/2979.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xiv) Broadcasts/398. Recording for purposes of time-shifting.

398. Recording for purposes of time-shifting.

The making in domestic premises for private and domestic use of a recording of a broadcast¹ solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright² in the broadcast or in any work included in it³.

Where a copy which would otherwise be an infringing copy⁴ is made in accordance with this provision but is subsequently dealt with⁵, it must be treated as an infringing copy for the purposes of that dealing⁶, and, if that dealing infringes copyright, it must be treated as an infringing copy for all subsequent purposes⁷.

1 For the meaning of 'broadcast' see PARA 89 ante.

2 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

3 Copyright, Designs and Patents Act 1988 s 70(1) (numbered as such and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 2(2), 3, 19(1), (2), Sch 2). As to the application of the Copyright, Designs and Patents Act 1988 s 70 (as amended) see PARA 337 ante.

The burden of establishing that a recording was made for private or domestic use is on the defendant raising this defence. The interposition of a party in the recording exercise who does so for commercial gain is fatal to this defence: *Sony Music Entertainment (UK) Ltd v Easyinternetcafe Ltd* [2003] EWHC 62 (Ch), [2003] IP & T 1059, [2003] All ER (D) 249 (Jan).

4 For the meaning of 'infringing copy' see PARA 335 ante.

5 'Dealt with' means sold or let for hire, offered or exposed for sale or hire, or communicated to the public: Copyright, Designs and Patents Act 1988 s 70(3) (s 70(2), (3) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 19(2)). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante. For the meaning of 'communication to the public' see PARA 326 ante.

6 Copyright, Designs and Patents Act 1988 s 70(2)(a) (as added: see note 5 supra).

7 Ibid s 70(2)(b) (as added: see note 5 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xiv) Broadcasts/399. Photographs of broadcasts.

399. Photographs of broadcasts.

The making in domestic premises for private and domestic use of a photograph¹ of the whole or any part of an image forming part of a broadcast², or a copy³ of such a photograph, does not infringe any copyright⁴ in the broadcast or in any film⁵ included in it⁶.

Where a copy which would otherwise be an infringing copy⁷ is made in accordance with this provision but is subsequently dealt with⁸, it must be treated as an infringing copy for the purposes of that dealing⁹, and, if that dealing infringes copyright, it must be treated as an infringing copy for all subsequent purposes¹⁰.

1 For the meaning of 'photograph' see PARA 77 ante.

2 For the meaning of 'broadcast' see PARA 89 ante.

3 For the meaning of 'copy' see PARA 314 ante.

4 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

5 For the meaning of 'film' see PARA 86 ante.

6 Copyright, Designs and Patents Act 1988 s 71(1) (s 71 substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 20(1)). As to the application of the Copyright, Designs and Patents Act 1988 s 71 (as substituted) see PARA 337 ante.

7 For the meaning of 'infringing copy' see PARA 335 ante.

8 'Dealt with' means sold or let for hire, offered or exposed for sale or hire, or communicated to the public: Copyright, Designs and Patents Act 1988 s 71(3) (as substituted: see note 6 supra). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante. For the meaning of 'communication to the public' see PARA 326 ante.

9 Ibid s 71(2)(a) (as substituted: see note 6 supra).

10 Ibid s 71(2)(b) (as substituted: see note 6 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xiv) Broadcasts/400. Free public showing or playing of broadcast.

400. Free public showing or playing of broadcast.

The showing or playing in public of a broadcast¹ to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any copyright in: (1) the broadcast²; (2) any sound recording³ (except so far as it is an excepted sound recording⁴) included in it⁵; or (3) any film included in it⁶.

Where by virtue of this provision the copyright in a broadcast shown or played in public is not infringed, copyright in any excepted sound recording included in it is not infringed if the playing or showing of that broadcast in public:

- 498 (a) forms part of the activities of an organisation that is not established or conducted for profit⁷; or
- 499 (b) is necessary for the purposes of:
 - 19 23. (i) repairing equipment for the reception of broadcasts⁸;
 - 24. (ii) demonstrating that a repair to such equipment has been carried out⁹; or
 - 25. (iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire¹⁰.
- 20

The audience is treated as having paid for admission to a place if they have paid for admission to a place of which that place forms part¹¹; or if goods or services are supplied at that place, or a place of which it forms part, at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast¹², or at prices exceeding those usually charged there and which are partly attributable to those facilities¹³. The following are not regarded as having paid for admission to a place: (A) persons admitted as residents or inmates of the place¹⁴; (B) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts is only incidental to the main purposes of the club or society¹⁵.

Where the making of the broadcast was an infringement of the copyright in a sound recording or film, the fact that it was heard or seen in public by the reception of the broadcast must be taken into account in assessing the damages for that infringement¹⁶.

1 As to infringement of copyright by the showing or playing of a broadcast in public see PARAS 324-325 ante. For the meaning of 'copyright' see PARA 57 ante. For the meaning of 'broadcast' see PARA 89 ante.

2 Copyright, Designs and Patents Act 1988 s 72(1)(a) (s 72(1) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 2(2), 3, 21(1)(a), Sch 2). As to the application of the Copyright, Designs and Patents Act 1988 s 72 (as amended) see PARA 337 ante.

3 For the meaning of 'sound recording' see PARA 84 ante.

4 An 'excepted sound recording' is a sound recording: (1) whose author is not the author of the broadcast in which it is included; and (2) which is a recording of music with or without words spoken or sung: Copyright, Designs and Patents Act 1988 s 72(1A) (s 72(1A), (1B) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 21(1)(b)). For the meaning of 'author' see PARA 110 ante.

5 Copyright, Designs and Patents Act 1988 s 72(1)(b) (as amended: see note 2 supra).

- 6 Ibid s 72(1)(c) (as amended: see note 2 supra). For the meaning of 'film' see PARA 86 ante.
- 7 Ibid s 72(1B)(a) (as added: see note 4 supra).
- 8 Ibid s 72(1B)(b)(i) (as added: see note 4 supra). As to references to the reception of broadcasts see PARA 89 note 2 ante.
- 9 Ibid s 72(1B)(b)(ii) (as added: see note 4 supra).
- 10 Ibid s 72(1B)(b)(iii) (as added: see note 4 supra). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante.
- 11 Ibid s 72(2)(a).
- 12 Ibid s 72(2)(b)(i) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2).
- 13 Copyright, Designs and Patents Act 1988 s 72(2)(b)(ii).
- 14 Ibid s 72(3)(a).
- 15 Ibid s 72(3)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2).
- 16 Copyright, Designs and Patents Act 1988 s 72(4) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2). As to damages for infringement see PARA 419 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xiv) Broadcasts/401. Reception and retransmission of wireless broadcast by cable.

401. Reception and retransmission of wireless broadcast by cable.

The following provisions apply where a wireless broadcast¹ made from a place in the United Kingdom² is received and immediately retransmitted by cable³.

The copyright⁴ in the broadcast is not infringed:

- 500 (1) if the retransmission by cable is in pursuance of a relevant requirement⁵; or
- 501 (2) if and to the extent that the broadcast is made for reception in the area in which it is retransmitted by cable and forms part of a qualifying service⁶.

Nor is the copyright in any work included in the broadcast infringed if and to the extent that the broadcast is made for reception in the area in which it is retransmitted by cable; but, where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was retransmitted by cable must be taken into account in assessing the damages for that infringement⁷.

Where the retransmission by cable is in pursuance of a relevant requirement⁸ but, to any extent, the area in which the retransmission by cable takes place ('the cable area') falls outside the area for reception in which the broadcast is made ('the broadcast area')⁹, the retransmission by cable, to the extent that it is provided for so much of the cable area as falls outside the broadcast area, of any work included in the broadcast must¹⁰ be treated as licensed by the owner of the copyright¹¹ in the work, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the retransmission by cable of the broadcast as may be agreed or determined in default of agreement by the Copyright Tribunal¹²; however, this provision does not apply if, or to the extent that, the retransmission of the work by cable is otherwise¹³ licensed by the owner of the copyright in the work¹⁴.

1 For the meaning of 'wireless broadcast' see PARA 88 note 8 ante.

2 For the meaning of 'United Kingdom' see PARA 3 note 1 ante. As to the place from which a broadcast is made see PARAS 88, 90 ante.

3 Copyright, Designs and Patents Act 1988 s 73(1) (s 73 substituted by the Broadcasting Act 1996 s 138, Sch 9 para 1; and the Copyright, Designs and Patents Act 1988 s 73(1) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(1)(b)). As to the application of the Copyright, Designs and Patents Act 1988 s 73 (as substituted and amended) see PARA 337 ante. References to retransmission by cable include the transmission of microwave energy between terrestrial fixed points: s 73(13) (added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(1)(h)).

4 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

5 Copyright, Designs and Patents Act 1988 s 73(2)(a) (as substituted (see note 3 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(1)(c)). 'Relevant requirement' means a requirement imposed by a general condition (within the meaning of the Communications Act 2003 Pt 2 Ch 1 (ss 32-151): see TELECOMMUNICATIONS vol 97 (2010) PARA 104), the setting of which is authorised under s 64 (must-carry obligations: see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 265): Copyright, Designs and Patents Act 1988 s 73(7) (as so substituted; and further substituted by the Communications Act 2003 s 406(1), Sch 17 para 92(1), (3)).

6 Copyright, Designs and Patents Act 1988 s 73(2)(b) (as substituted (see note 3 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(1)(d)). 'Qualifying service' means any of the following services:

- 30 (1) a regional or national Channel 3 service;
- 31 (2) Channel 4, Channel 5 and S4C;
- 32 (3) the public teletext service;
- 33 (4) S4C Digital; and
- 34 (5) the television broadcasting services and teletext service of the British Broadcasting Corporation,

and expressions used in this provision have the same meanings as in the Communications Act 2003 Pt 3 (ss 198-362): Copyright, Designs and Patents Act 1988 s 73(6) (as so substituted; and amended by the Communications Act 2003 Sch 17 para 92(1), (2)(a), (b)). The Secretary of State may by order amend the Copyright, Designs and Patents Act 1988 s 73(6) (as substituted and amended) so as to add any service to, or remove any service from, the definition of 'qualifying service': s 73(8) (as so substituted). Any order under s 73 (as substituted and amended) may contain such transitional provision as appears to the Secretary of State to be appropriate (s 73(11) (as so substituted)); and such an order must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament (s 73(12) (as so substituted)). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 183 note 2 ante. As to the British Broadcasting Corporation see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 306 et seq; as to Channel 3, Channel 4, Channel 5, S4C, and S4C Digital see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 353 et seq; and as to the public teletext service see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 331.

7 Ibid s 73(3) (as substituted (see note 3 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(1)(d), (e)). As to damages for infringement see PARA 419 post. The Secretary of State may by order: (1) provide that in specified cases the Copyright, Designs and Patents Act 1988 s 73(3) (as substituted and amended) is to apply in relation to broadcasts of a specified description which are not made as mentioned therein; or (2) exclude the application of s 73(3) (as substituted and amended) in relation to broadcasts of a specified description made as mentioned therein: s 73(9) (as so substituted). Where the Secretary of State exercises the power conferred by s 73(9)(b) (as substituted) (see head (2) supra) in relation to broadcasts of any description, the order may also provide for s 73(4) (as substituted and amended) (see the text to notes 8-12 infra) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description: s 73(10) (as so substituted). As to the making of orders see s 73(11), (12) (as substituted); and note 6 supra. At the date at which this volume states the law no order had been made under s 73(9) (as substituted).

8 Ibid s 73(4)(a) (as substituted (see note 3 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(1)(f)(i)).

9 Copyright, Designs and Patents Act 1988 s 73(4)(b) (as substituted (see note 3 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(1)(f)(ii)).

10 Ie subject to the Copyright, Designs and Patents Act 1988 s 73(5) (as substituted and amended): see the text to notes 13-14 infra.

11 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

12 Copyright, Designs and Patents Act 1988 s 73(4) (as substituted (see note 3 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(1)(f)(iii), (iv)). As to the Copyright Tribunal see PARA 207 ante; and as to such applications to the Tribunal see PARAS 291-292 ante.

13 Ie apart from the Copyright, Designs and Patents Act 1988 s 73(4) (as substituted and amended): see the text to notes 8-12 supra.

14 Ibid s 73(5) (as substituted (see note 3 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(1)(g)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xiv) Broadcasts/402. Provision of sub-titled copies of broadcast.

402. Provision of sub-titled copies of broadcast.

A designated body¹ may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies² which are sub-titled or otherwise modified for their special needs, make copies of broadcasts³ and issue⁴ or lend⁵ copies to the public, without infringing any copyright⁶ in the broadcasts or works included in them⁷. This provision does not apply if, or to the extent that, there is a certified licensing scheme⁸ providing for the grant of licences⁹.

1 A 'designated body' means a body designated for these purposes by order of the Secretary of State, who must not designate a body unless he is satisfied that it is not established or conducted for profit: Copyright, Designs and Patents Act 1988 s 74(2). Such an order must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 74(3). The National Sub-titling Library for Deaf People is designated as a body for these purposes: Copyright (Sub-titling of Broadcasts and Cable Programmes) (Designated Body) Order 1989, SI 1989/1013, art 2. As to the Secretary of State see PARA 183 note 2 ante.

2 For the meaning of 'copies' see PARA 314 ante.

3 For the meaning of 'broadcast' see PARA 89 ante.

4 For the meaning of 'issue copies to the public' see PARA 322 ante.

5 For the meaning of 'lend' see PARA 323 ante.

6 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

7 Copyright, Designs and Patents Act 1988 s 74(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 2(2), 3, 23(1), Sch 2). As to the application of the Copyright, Designs and Patents Act 1988 s 74 (as amended) see PARA 337 ante.

8 Ie a licensing scheme certified for the purposes of *ibid* s 74 (as amended) under s 143 (as amended): see PARA 183 ante. For the meaning of 'licensing scheme' see PARA 224 ante.

9 *Ibid* s 74(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xiv) Broadcasts/403. Recording for archival purposes.

403. Recording for archival purposes.

A recording of a broadcast¹ of a designated² class³, or a copy⁴ of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body⁵ without thereby infringing any copyright⁶ in the broadcast or in any work included in it⁷.

1 For the meaning of 'broadcast' see PARA 89 ante.

2 'Designated' means designated for these purposes by order of the Secretary of State: Copyright, Designs and Patents Act 1988 s 75(2). Such an order must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 75(3). As to the Secretary of State see PARA 183 note 2 ante.

3 All broadcasts other than encrypted transmissions are designated as a class for these purposes: Copyright (Recording for Archives of Designated Class of Broadcasts and Cable Programmes) (Designated Bodies) Order 1993, SI 1993/74, art 3 (amended by SI 2003/2498).

4 For the meaning of 'copy' see PARA 314 ante.

5 The Secretary of State, when making an order, must not designate a body unless he is satisfied that it is not established or conducted for profit: Copyright, Designs and Patents Act 1988 s 75(2). The following bodies are designated as a body for which a recording of a broadcast of the class designated by the Copyright (Recording for Archives of Designated Class of Broadcasts and Cable Programmes) (Designated Bodies) Order 1993, SI 1993/74, art 3 (as amended) (see note 3 supra), or a copy thereof, may be made for the purpose of placing the same in any archive maintained by it: the British Film Institute; the British Library; the British Medical Association; the British Music Information Centre; the Imperial War Museum; the Music Performance Research Centre; the National Library of Wales; and the Scottish Film Council: art 2, Schedule (art 2 amended by SI 2003/2498).

6 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

7 Copyright, Designs and Patents Act 1988 s 75(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). As to the application of the Copyright, Designs and Patents Act 1988 s 75 (as amended) see PARA 337 ante.

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404. Adaptations.

An act which may be done without infringing copyright¹ in a literary², dramatic³ or musical⁴ work does not, where that work is an adaptation⁵, infringe any copyright in the work from which the adaptation was made⁶.

1 le by virtue of the Copyright, Designs and Patents Act 1988 Pt I Ch III (ss 28-76) (as amended): see PARAS 337 et seq ante, 734 post. For the meaning of 'copyright' see PARA 57 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante,

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'adaptation' see PARA 327 ante.

6 Copyright, Designs and Patents Act 1988 s 76. As to the application of s 76 see PARA 337 ante.

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(xv) Defence of Consent, Repairs, Innocence or Public Interest

405. Consent.

If the owner of the copyright has consented to an act which would otherwise be an infringement of his right, there is no infringement¹. The consent requires no formalities to make it effective, and needs no consideration to support it. If the consent is given without consideration, it may be withdrawn at any time. It may be expressed or implied; but it will not be implied merely from the fact that no action has been taken in the past², nor from an erroneous expression of opinion by the copyright owner that the defendant's acts would not in law constitute an infringement³; nor will a custom to copy be admitted⁴.

The consent which renders lawful that which would otherwise be an infringement of copyright need not, and commonly does not, confer on the person to whom it is given any interest in the right itself, or enable him to permit others to exercise it, or to prevent them from doing so; but it may take a form which amounts to the grant of an exclusive licence, and it is then required to be in writing to make it effective as such⁵.

1 See the Copyright, Designs and Patents Act 1988 s 16(2); and PARA 312 ante.

2 *Maxwell v Somerton* (1874) 30 LT 11. If, however, it would be unconscionable for the copyright owner to enforce his rights, his remedies may be barred: *Habib Bank Ltd v Habib Bank AG Zurich* [1981] 2 All ER 650 at 665-668, [1981] 1 WLR 1265 at 1283-1287, [1982] RPC 1 at 35-38, CA (passing off). See also *Hoover plc v George Hulme (Stockport) Ltd and Hulme* [1982] FSR 565; *Kalamazoo (Aust) Pty Ltd v Compact Business Systems Pty Ltd* (1985) 5 IPR 213, Qld SC; *Nelson v Rye* [1996] 2 All ER 186, [1996] FSR 313.

3 *Morris v Ashbee* (1868) LR 7 Eq 34.

4 *Walter v Steinkopff* [1892] 3 Ch 489; *Hogg v Kirby* (1803) 8 Ves 215; *Wyatt v Barnard* (1814) 3 Ves & B 77; *Maxwell v Somerton* (1874) 30 LT 11; *Banier v News Group Newspapers Ltd* [1997] FSR 812; *USP plc v London General Holdings Ltd* [2005] EWCA Civ 931, [2006] FSR 65, [2005] All ER (D) 320 (Jul); but see *Express Newspapers plc v News (UK) Ltd* [1990] 3 All ER 376, [1990] 1 WLR 1320.

5 See the Copyright, Designs and Patents Act 1988 s 92; and PARA 176 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(9) PERMITTED ACTS/(xv) Defence of Consent, Repairs, Innocence or Public Interest/406. Repairs and spare parts.

406. Repairs and spare parts.

A purchaser of an article has the right to do whatever is necessary to keep it in running order and to effect whatever repairs may be necessary in the most economical way possible¹. Accordingly it is not an infringement of the copyright in any artistic works² from which the article is made to make or to have made spare parts to enable such repairs to be carried out³. Nor is it an infringement to make such spare parts in advance in order to meet the requirements of such purchasers⁴. The so called 'spare parts' defence is, however, limited to true spare parts such as replacement exhausts for motor cars⁵ where the cost is relatively small in relation to the capital and other running costs of the vehicle and does not extend to 'consumables' such as replacement cartridges for photocopiers or laser printers⁶ where the cost of such items to the lifetime cost of the equipment is relatively high⁷. By analogy, it is not an infringement of copyright in a computer program to use the source code to remove defects or bugs from the system, but using the source code to make improvements is an infringement⁸. Likewise, the defence does not extend to the re-calibration of discriminators in coin receiving and changing machines⁹.

1 *British Leyland Motor Corpn v Armstrong Patents Co Ltd* [1986] AC 577 at 625, [1986] 1 All ER 850 at 861, HL, per Lord Bridge of Harwich, and at 643 and 875 per Lord Templeman.

2 For the meaning of 'artistic work' see PARA 75 ante. As to infringement of artistic works by copying see PARA 314 et seq ante. This type of infringement is no longer actionable in respect of works made on or after 1 August 1989 owing to the operation of the Copyright, Designs and Patents Act 1988 s 51: see PARA 376 ante. The 'spare parts' defence remains relevant to infringement of the copyright in artistic works made before that date: see PARA 377 ante. As to the infringement of design right see PARA 526 et seq post.

3 *British Leyland Motor Corpn v Armstrong Patents Co Ltd* [1986] AC 577, [1986] 1 All ER 850, HL.

4 *British Leyland Motor Corpn v Armstrong Patents Co Ltd* [1986] AC 577, [1986] 1 All ER 850, HL.

5 *British Leyland Motor Corpn v Armstrong Patents Co Ltd* [1986] AC 577, [1986] 1 All ER 850, HL.

6 *Canon Kabushiki Kaisha v Green Cartridge Co (Hong Kong) Ltd* [1997] AC 728, [1997] FSR 817, PC. See also *Flogates Ltd v Refco Ltd* (1994) [1996] FSR 935 (refractory sliding gate valves for molten steel furnaces arguably 'consumables' and not spare/replacement parts).

7 *Canon Kabushiki Kaisha v Green Cartridge Co (Hong Kong) Ltd* [1997] AC 728, [1997] FSR 817, PC (where the Privy Council was of the view that the basis of the decision in *British Leyland Motor Corpn v Armstrong Patents Co Ltd* [1986] AC 577, [1986] 1 All ER 850, HL, was that the assertion by British Leyland of its copyrights was unfair and an abuse of a de facto monopoly and that, once one departed from a case in which such factors were plain and obvious, the jurisprudential and economic basis for the doctrine was extremely fragile). See also *Mars UK Ltd v Teknowledge Ltd* [1999] IP & T 26, [1999] All ER (D) 600, in which the court found no public policy reason to extend the defence.

8 *Saphena Computing Ltd v Allied Collection Agencies Ltd* [1995] FSR 616, CA. As to permitted acts in respect of computer programs see PARA 371 et seq ante.

9 *Mars UK Ltd v Teknowledge Ltd* [1999] IP & T 26, [1999] All ER (D) 600.

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407. Innocence as a defence.

In general, any invasion of a right of property gives a cause of action to the owner against the person responsible for the invasion, whether it is intentional or not¹. Consequently innocence is no defence to a claim for infringement of copyright².

Where, however, in a claim for infringement it is shown that at the time of the infringement the defendant did not know and had no reason to believe³ that copyright subsisted in the work to which the claim relates, the claimant is not entitled to damages against him, but this is without prejudice to any other remedy⁴. However, this provision⁵ is no protection to a person who, knowing or suspecting that copyright exists, makes a mistake as to the owner of the copyright and under that mistake obtains authority to publish from a person who is not in fact the owner⁶. A defendant does not establish that he had no reasonable grounds for suspecting the existence of copyright by showing that he held an honest but erroneous view of the law⁷ or by showing that he reasonably believed that the work he had published was an original work⁸, nor can he plead that he had no reasonable grounds for suspecting the existence of copyright in a work if he made no inquiry whatever as to the source from which the work was derived⁹.

1 *Mansell v Valley Printing Co* [1908] 2 Ch 441 at 446, CA, per Farwell LJ.

2 See *Polydor Ltd v Bowles* [2005] EWHC 3191 (Ch), sub nom *Polydor Ltd v Woodhouse* [2005] All ER (D) 375 (Nov). In an claim for secondary infringement, knowledge or reason to believe on the part of the defendant must be shown: see PARA 329 et seq ante. As to infringement of copyright see PARA 311 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

3 For the meaning of 'know or have reason to believe' in the context of secondary infringement see PARA 334 ante.

4 Copyright, Designs and Patents Act 1988 s 97(1). The only case in which this defence appears to have been successfully pleaded is *Swinstead v R Underwood & Sons* (1924) MacG Cop Cas (1923-28) 39 (an action for infringement by copying an inscription from a tombstone). The question has been raised as to whether the presumptions as to the subsistence and ownership of copyright (see PARAS 431-432 post) affect a defendant with notice for the purposes of infringement. It is submitted, however, that they do not have this effect because they are only presumptions in an action whereas the knowledge in question is knowledge at the time of the infringement: see *Sands and Mcdougall Pty Ltd v Robinson* (1917) 23 CLR 49 at 57, Aust HC, per Isaacs J.

5 In the Copyright, Designs and Patents Act 1988 s 97(1).

6 *Byrne v Statist Co* [1914] 1 KB 622 at 628 per Bailhache J; *Tate v Thomas* [1921] 1 Ch 503 at 513 per Eve J. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

7 *Pyram Ltd v Models (Leicester) Ltd* [1930] 1 Ch 639 at 644 per Clauson J; *I Whitaker & Sons Ltd v Publishers' Circular Ltd* (1946) MacG Cop Cas (1946-47) 10. The point was left open by Tomlin J in *Masson Seeley & Co Ltd v Embosotype Manufacturing Co* (1924) 41 RPC 160.

8 *John Lane, The Bodley Head Ltd v Associated Newspapers Ltd* [1936] 1 KB 715, [1936] 1 All ER 379.

9 *Kirk v Fleming* (1929) MacG Cop Cas (1928-35) 44 at 46 per Luxmoore J.

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408. Public interest.

Nothing in Part I of the Copyright, Designs and Patents Act 1988¹ affects any rule of law preventing or restricting the enforcement of copyright², on grounds of public interest or otherwise³.

The court may refuse to enforce copyright in cases where enforcement of the copyright would offend against the policy of the law⁴. The circumstances in which the court will enforce such a defence are not capable of precise categorisation or definition⁵. The defence is limited to the disclosure of misdeeds of a serious nature and of importance to the country which are clearly recognisable as such⁶. In considering any defence of public interest the court must have regard to the right of freedom of expression⁷ but it is only in rare cases that this right will override any copyright in a work⁸.

1 Ie the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

2 For the meaning of 'copyright' see PARA 57 ante.

3 Copyright, Designs and Patents Act 1988 s 171(3). See also PARA 64 ante.

4 *Hyde Park Residence Ltd v Yelland* [2001] Ch 143, [2000] EMLR 363, [2000] IP & T 412, CA, in which the court held that the Copyright, Designs and Patents Act 1988 s 171(3) (see the text to notes 1-3 supra) preserves the court's inherent jurisdiction to refuse to allow its process to be used in certain circumstances; *Ashdown v Telegraph Group Ltd* [2001] EWCA Civ 1142, [2002] Ch 149, [2001] 4 All ER 666, in which it was held that the Copyright, Designs and Patents Act 1988 s 171(3) gives rise to a public interest defence.

5 *Hyde Park Residence Ltd v Yelland* [2001] Ch 143, [2000] EMLR 363, [2000] IP & T 412, CA; *Ashdown v Telegraph Group Ltd* [2001] EWCA Civ 1142, [2002] Ch 149, [2001] 4 All ER 666. In *Hyde Park Residence Ltd v Yelland* supra, the view was stated that it is likely a court would be entitled to refuse to enforce copyright if the work is immoral, scandalous or contrary to family life, or is injurious to public life, public health and safety or the administration of justice, or incites or encourages others to act in such a way (see per Aldous LJ at [66]); however, the dissenting view that the public interest defence should not be circumscribed so tightly (see per Mance LJ at [83]) was supported by the court in *Ashdown v Telegraph Group Ltd* supra (see per Lord Phillips MR at [58]).

6 *Beloff v Pressdram Ltd* [1973] 1 All ER 241 at 260 per Ungood Thomas J. See also *Initial Services Ltd v Putterill* [1968] 1 QB 396, [1967] 3 All ER 145, CA; *Hubbard v Vosper* [1972] 2 QB 84, [1972] 1 All ER 1023, CA; *Lion Laboratories Ltd v Evans* [1985] QB 526, [1984] 2 All ER 417, CA; but see *Smith Kline & French Laboratories (Australia) Ltd v Secretary to the Department of Community Services and Health* (1990) 17 IPR 545.

7 Ie the right protected under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 10 and the Human Rights Act 1998: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 158.

8 *Ashdown v Telegraph Group Ltd* [2001] EWCA Civ 1142, [2002] Ch 149, [2001] 4 All ER 666. See also *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch), [2006] All ER (D) 276 (Mar); *Service Corp'n International plc v Channel Four Television Corp'n* [1999] EMLR 83.

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(xvi) General Defences

409. General defences.

In addition to the other defences available to him¹, a defendant may plead any other defence which is available generally in tort², including a defence that the claim is debarred by acquiescence or delay³, or that it is precluded by the EC Treaty⁴ and, in particular, may plead 'exhaustion of rights'⁵.

1 As to the other defences available see PARA 337 et seq ante.

2 As to such defences see TORT vol 97 (2010) PARA 456 et seq.

3 See eg *Habib Bank Ltd v Habib Bank AG Zurich* [1981] 2 All ER 650, [1981] 1 WLR 1265, CA (passing off); *Experience Hendrix LLC v PPX Enterprises Inc* [2002] EWHC 1353 (QB), [2002] All ER (D) 100 (Jul) (revsd on other grounds [2003] EWCA Civ 323, [2003] 1 All ER (Comm) 830, [2003] EMLR 515). As to acquiescence and delay generally see CIVIL PROCEDURE vol 11 (2009) PARAS 373-374; EQUITY vol 16(2) (Reissue) PARA 910 et seq.

4 See the Treaty establishing the European Economic Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 86; and the Treaty on European Union (Maastricht, 7 February 1992; Cm 1934) Title II art G para (1).

5 See PARA 335 note 9 ante. See also eg Case 16/74 *Centrafarm BV v Winthrop BV* [1974] ECR 1183, [1974] 2 CMLR 480, ECJ; Case 119/75 *Terrapin (Overseas) Ltd v Terranova Industrie CA Kapferer & Co* [1976] ECR 1039, [1976] 2 CMLR 482, ECJ; Cases 55/80, 57/80 *Musik-Vertrieb Membran GmbH v GEMA* [1981] ECR 147, [1981] 2 CMLR 44, ECJ; Case 62/79 *Compagnie Générale pour la Diffusion de la Télévision, Coditel SA v Ciné Vog Films SA* [1980] ECR 881, [1981] 2 CMLR 362, ECJ; Case 58/80 *Dansk Supermarked A/S v Imerco A/S* [1981] ECR 181, [1981] 3 CMLR 590, ECJ; Case 144/81 *Keurkoop BV v Nancy Kean Gifts BV* [1982] ECR 2853, [1983] 2 CMLR 47, ECJ. As to the limits of this doctrine see Case 341/87 *EMI Electrola GmbH v Patricia Im- und Export Verwaltungs GmbH* [1989] ECR 79, [1989] 2 CMLR 413, ECJ; Case 158/86 *Warner Bros Inc v Christiansen* [1988] ECR 2605, [1990] 3 CMLR 684, ECJ; Case 53/87 *Consorzio Italiano della Componentistica di Ricambio per Autoveicoli and Maxicar v Régie Nationale des Usines Renault* [1988] ECR 6039, [1990] 4 CMLR 265, ECJ; Case T-198/98 *Micro Leader Business v European Commission* [1999] ECR II-3989, [2000] All ER (EC) 361, CFI. As to the effect of the European legislation on the enforcement of private rights generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 23-24.

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(10) CIVIL ACTIONS AND REMEDIES

(i) Rights of Action

410. Rights of action in general.

An infringement of copyright¹ is actionable² by the copyright owner³; and in a claim for infringement of copyright all such relief by way of damages, injunction, accounts or otherwise is available to the claimant as is available in respect of the infringement of any other property right⁴.

Civil proceedings lie against the Crown for an infringement of copyright committed by a servant or agent⁵ of the Crown with the authority of the Crown⁶; but otherwise no proceedings lie against the Crown by virtue of the Crown Proceedings Act 1947 in respect of an infringement of copyright⁷.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 Is subject to the provisions of the Copyright, Designs and Patents Act 1988 ss 97-115 (as amended) (see PARAS 407 ante, 418 et seq post): s 96(3).

3 Ibid s 96(1). As to who is the owner of the copyright in a work see PARA 118 et seq ante.

4 Ibid s 96(2). As to the non-availability of damages in respect of innocent infringement see PARA 407 ante; and as to procedure see PARA 427 et seq post. As to the rights and remedies of exclusive licensees see PARA 429 post.

5 'Agent' includes an independent contractor employed by the Crown: Crown Proceedings Act 1947 s 38(2).

6 Ibid s 3(1)(e) (s 3(1) substituted by the Copyright, Designs and Patents Act 1988 s 303(1), Sch 7 para 4(1)).

7 Crown Proceedings Act 1947 s 3(1) (as substituted: see note 6 supra).

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411. Period of limitation.

A claim in respect of infringement of copyright may not be brought after the expiration of six years from the date of the infringement¹, and accordingly damages for infringement cannot be recovered after that period has elapsed².

1 See the Limitation Act 1980 s 2. It must be borne in mind that an infringement may be of a recurring character. Sales may be made of infringing articles long after such articles are made. Cf the Copyright Designs and Patents Act 1988 s 170, Sch 1 para 14(3); and PARA 335 note 2 ante.

2 *Caxton Publishing Co Ltd v Sutherland Publishing Co* [1939] AC 178, [1938] 4 All ER 389, HL. It has been held in a Canadian case that infringements which are not actionable because of the expiry of the limitation period may be used to support an application for an injunction to restrain future infringements: *Warner Bros Seven Arts Inc v CESM-TV Ltd* (1969) 41 Fox Pat C 74.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(10) CIVIL ACTIONS AND REMEDIES/(ii) Particular Remedies/A. INJUNCTIONS/412. Injunction a normal remedy.

(ii) Particular Remedies

A. INJUNCTIONS

412. Injunction a normal remedy.

The general principles on which injunctions are granted for the protection of copyright¹ do not differ from those on which they are granted for the protection of other property². The nature of copyright property makes an injunction a peculiarly suitable, and indeed the normal, remedy³. An injunction is, however, a discretionary remedy and the court may decline to grant an injunction where the claimant has shown that he is interested in money only or where the harm to the defendant is disproportionate to the benefit of the claimant or where the claimant's conduct would make it inequitable to grant such relief⁴. Where there is no likelihood of a repetition of the infringement, the court may grant a declaration that the claimant's copyright has been infringed instead of an injunction⁵. One of two part owners may obtain an injunction to restrain infringement by the other⁶. If the defendant disputes the claimant's title and has refused to give an undertaking, the claimant is entitled to an injunction⁷; but, if an undertaking has been offered, the question is whether it is unreasonable on the part of the claimant to refuse the offer and proceed with the claim⁸. A mere agent for sale has not a sufficient interest to enable him to obtain an injunction⁹. Except where the Brussels Regulation¹⁰ applies¹¹, an injunction will not be granted to restrain an infringement of copyright in a foreign country¹². The court in England and Wales has jurisdiction to try claims for the infringement of foreign copyright and to grant injunctions accordingly¹³.

Where an injunction is claimed by a claimant, permission may be granted to amend the defence so as to take account of legislation subsequent to the date of issue of the claim form¹⁴.

1 For the meaning of 'copyright' see PARA 57 ante.

2 As to the general principles on which the court acts in granting injunctions see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

3 Eg an injunction was granted where an incident in a film infringed the copyright in the claimant's book (*Fernald v Jay Lewis Productions Ltd and Independent Film Distributors Ltd* (1953) [1975] FSR 499) and where a nautical almanac infringed the copyright in a small number of maps (*Macmillan Publishers Ltd v Thomas Reed Publications Ltd* [1993] FSR 455).

4 *Ocular Sciences Ltd v Aspect Vision Care Ltd*, *Geoffrey Harrison Galley v Ocular Vision Ltd* [1997] RPC 289; *Phonographic Performance Ltd v Maitra (Performing Right Society Ltd intervening)* [1998] 2 All ER 638, [1998] EMLR 370, CA. See generally *Shelfer v City of London Electric Lighting Co* [1895] 1 Ch 287, CA.

5 See eg *C & H Engineering v F Klucznik & Son Ltd* [1992] FSR 667; *Samuelson v Producers' Distributing Co Ltd* [1932] 1 Ch 201, CA.

6 *Cescinsky v George Routledge & Sons Ltd* [1916] 2 KB 325. As to joint ownership see PARA 121 ante.

7 *Performing Right Society Ltd v Mitchell and Booker (Palais de Danse) Ltd* [1924] 1 KB 762 at 774 per McCardie J; *EW Savory Ltd v World of Golf Ltd* [1914] 2 Ch 566 at 575, CA, per Neville J; and see *Geary v Norton* (1846) 1 De G & Sm 9; *JT Smith and JE Jones Ltd v Service, Reeve & Co* [1914] 2 Ch 576 (patent cases).

8 *Oliver v Dickin* [1936] 2 All ER 1004. As to undertakings see PARA 413 post.

9 *Nicol v Stockdale* (1785) 3 Swan 687.

10 le EC Council Regulation 44/2001 (OJ L12, 16.01.2001, p 1) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which entered into force on 1 March 2002 (see art 76): see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 65 et seq.

11 See *Pearce v Ove Arup Partnership Ltd* [2000] Ch 403, [1999] 1 All ER 769, CA (English defendants sued in England for infringement of Dutch copyright in Holland); *Coin Controls Ltd v Suzo International (UK) Ltd* [1997] Ch 33, [1997] 3 All ER 45, [1997] FSR 660 (patent case).

12 '*Morocco Bound*' *Syndicate Ltd v Harris* [1895] 1 Ch 534; *Def Lepp Music v Stuart-Brown* [1986] RPC 273; *Tyburn Productions Ltd v Conan Doyle* [1991] Ch 75, [1990] 1 All ER 909. See also CONFLICT OF LAWS vol 8(3) (Reissue) PARA 76.

13 This is so, at least in so far as concerns countries which are party to the Brussels Regulation (see note 10 supra). See the Civil Jurisdiction and Judgements Act 1982; and CONFLICT OF LAWS vol 8(3) (Reissue) PARA 65 et seq.

14 *Application des Gaz SA v Falks Veritas Ltd* [1974] Ch 381, [1974] 3 All ER 51, CA (where amendment was allowed to permit defences based on provisions of the EC Treaty relating to undue restriction of competition within the European Union and abuse of dominant position therein).

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413. Offer of undertaking by defendant.

Where copyright has been infringed¹, the claimant is entitled to an order and is not debarred from exercising his right to sue by a suggestion by the defendant that he will promise not to do it again and will pay such damage as may be agreed upon²; and the claimant is entitled to the costs of a motion in open court for the purpose of establishing his right³. If, however, the claimant, after being offered an undertaking, proceeds with his claim, he will be given only the costs down to the date of the offer and of the day's appearance⁴, unless the court considers that, having regard to the nature of the defence pleaded, it was reasonable for him to go on⁵.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 *EW Savory Ltd v World of Golf Ltd* [1914] 2 Ch 566 at 571, CA, per Neville J. A successful claimant may be entitled to costs, even though the defendant has paid into court more than the damages recovered: see *Mate v Samuel Stephen Ltd* (1930) MacG Cop Cas (1928-35) 257.

3 *JT Smith and JE Jones Ltd v Service, Reeve & Co* [1914] 2 Ch 576 at 579 per Sargant J. As to costs where money has been paid into court see *Performing Right Society Ltd v Caryl Theatrical Syndicate Ltd* [1923] 2 KB 146 (on appeal [1924] 1 KB 1, CA); *Colgate Palmolive Ltd v Markwell Finance Ltd* [1990] RPC 197. See also *C & H Engineering v F Klucznik & Son Ltd* [1992] FSR 667 ('Calderbank' letter inadequate because it did not make clear that the undertaking was to the court, it would have been difficult to enforce and was not referable to the claimant's right); and PARA 435 note 5 post.

4 *Jenkins v Hope* [1896] 1 Ch 278.

5 *Oliver v Dickin* [1936] 2 All ER 1004.

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414. Interim injunction.

It is often of importance for a claimant to obtain immediate protection from a threatened infringement of his copyright¹. In such a case he should apply for an interim injunction² for the purpose of preserving his rights from further interference pending the trial of the claim³. The normal principles appropriate to the granting of interim relief apply⁴. The claimant must show that there is a serious issue to be tried and, for this purpose, the court should not try to resolve conflicts in the affidavit evidence or difficult questions of law⁵. If damages would be an adequate remedy for the claimant and the defendant is in a position to pay, an interim injunction should not be granted⁶. Conversely, if damages would be an adequate remedy for the defendant and the claimant would be able to pay them, an interim injunction should be granted. If damages would not be an adequate remedy for either party, the court should attempt to assess whether the grant or the withholding of an injunction is likely to cause the greater harm and act accordingly⁷. Where the balance is more or less even, the court should seek to preserve the status quo⁸ and may take into account the relative strength of each party's case as disclosed in the affidavit evidence⁹. An interim injunction may be granted where the claimant is only an exclusive licensee¹⁰ or has only an equitable title¹¹. The defendant, if injured as the result of the injunction, will be entitled to compensation by virtue of the undertaking as to damages by the claimant which is an invariable term of the granting of an interim injunction¹².

An interim injunction will not normally be granted, however, where a bona fide defence of fair dealing has been pleaded¹³, where the grant would be against the public interest¹⁴, where the claimant has been guilty of undue delay in coming to the court or where his conduct has amounted to acquiescence in the infringement¹⁵ or, conversely, where the claim is premature¹⁶, or where there is any substantial doubt as to the claimant's right to succeed¹⁷.

Where an injunction has been granted restraining the sale of copies of a work, the defendant will not be allowed to sell copies already printed, even though he were to keep an account in respect of them, unless the claimant consents¹⁸. Similarly, where the injunction is against a work which is proposed to be published in successive numbers, on the ground of piracy in the published numbers, it seems that the injunction will not be qualified so as to permit the publication of future numbers while the question of piracy remains undecided¹⁹.

In a proper case an injunction may be granted without notice; and, where the claimant can establish that the defendant is likely to hide or destroy the evidence of infringement if notice were given, the court may grant an order without notice for inspection and removal of documents and infringing goods into the custody of the claimant pending trial²⁰. If the claimant then fails to prosecute the claim to trial with due diligence, the injunction may be discharged²¹.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 As to interim injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARAS 334, 383 et seq.

3 In certain circumstances the court will grant an injunction against parties who cannot identified by name, but who are known to exist and who will not be in any doubt that the order is directed at them: *Bloomsbury Publishing plc v Newsgroup Newspapers Ltd* [2003] EWHC 1087 (Ch), [2003] All ER (D) 344 (May).

4 *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, [1975] 1 All ER 504, HL; *Series 5 Software Ltd v Clarke* [1996] 1 All ER 853, [1996] FSR 273. The court often tends to delay the start of a new activity by the grant of an injunction rather than risk damaging one which is established: *Granada Group Ltd v Ford Motor Co*

Ltd [1972] FSR 103. See also *Mirage Studios v Counter-Feat Clothing Co Ltd* [1991] FSR 145; *Reactor Software v Thomas* [2003] EWHC 2211 (Ch), [2003] All ER (D) 532 (Jul) (additional terms to injunction refused where these would hinder defendant in defending the claim and claimant's position adequately protected by existing order); *Hunter Kane Ltd v Watkins* [2003] EWHC 722 (Ch), [2003] All ER (D) 144 (Feb) (claimant's proposed terms for continuation of interim injunction refused as too wide).

5 See eg *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch), [2006] All ER (D) 276 (Mar).

6 See *Planet Ace Ltd v Hendon Mob* [2005] All ER (D) 49 (Feb). In some cases the court has refused an injunction where an impecunious defendant has undertaken to pay part of the turnover of the infringing articles into court: *Brupat Ltd v Sandford Marine Products Ltd* [1983] RPC 61, CA.

7 *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, [1975] 1 All ER 504, HL; *Cayne v Global Natural Resources plc* [1984] 1 All ER 225, CA. Where it is clear that the balance of convenience favours the defendant and this is clear to the claimant at the outset, the court may award costs against the claimant for proceeding with the motion and in extreme circumstances may make an order forthwith for assessment and payment: *Kickers International SA v Paul Kettle Agencies Ltd* [1990] FSR 436; *Emap National Publications Ltd v Security Publications Ltd* [1997] FSR 891.

8 *Corruplast Ltd v George Harrison (Agencies) Ltd* [1978] RPC 761, CA; *Elanco Products Ltd v Mandops (Agrochemical Specialists) Ltd* [1979] FSR 46, CA; *Morgan-Grampian plc v Training Personnel Ltd* [1992] FSR 267; *Blazer plc v Yardley & Co Ltd* [1992] FSR 501. As to when the status quo should be determined see *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] AC 130, [1983] 2 All ER 770, HL.

9 See *Series 5 Software Ltd v Phillip Clarke* [1996] 1 All ER 853, [1996] FSR 273; *GMG Radio Holdings Ltd v Tokyo Project Ltd* [2005] EWHC 2188 (Ch), [2005] All ER (D) 155 (Oct) (passing off). An injunction is likely to be granted if the defendant fails on motion to establish an arguable defence: *Manchester Corpn v Connolly* [1970] Ch 420, [1970] 1 All ER 961, CA; *Quantel Ltd v Electronic Graphics Ltd* [1990] RPC 272 (patents cases); *Consortio del Prosciutto di Parma v Marks & Spencer plc* [1991] RPC 351 at 364, CA; but see *Entec (Pollution Control) Ltd v Abacus Mouldings* [1992] FSR 332.

10 See the Copyright, Designs and Patents Act 1988 s 102(1), (3); and PARA 429 post. For the meaning of 'exclusive licence' see PARA 176 ante. As to the right of an exclusive licensee to sue see PARA 429 post.

11 *Oxford and Cambridge Universities v Richardson* (1802) 6 Ves 689 at 707; *Mawman v Tegg* (1826) 2 Russ 385; *Sweet v Shaw* (1839) 8 LJ Ch 216; *Sweet v Cater* (1841) 11 Sim 572; *Bohn v Bogue* (1846) 7 LTOS 277 at 278; *Merchant Adventurers Ltd v M Grew & Co Ltd (t/a Emess Lighting)* [1972] Ch 242, [1971] 2 All ER 657, [1973] RPC 1. The legal owner must, however, be joined prior to trial: *Performing Right Society Ltd v London Theatre of Varieties Ltd* [1924] AC 1, HL; *Three Rivers District Council v Governor and Company of the Bank of England* [1996] QB 292, [1995] 4 All ER 312, CA.

12 *Chappell v Davidson* (1856) 8 De GM & G 1; *John Richardson Computers Ltd v Flanders (No 2)* [1994] FSR 144; *Universal Thermosensors Ltd v Hibben* [1992] 3 All ER 257, [1992] FSR 361. The claimant's ability to pay on the cross-undertaking is a factor to be taken into account: *Alfred Dunhill Ltd v Sunoptic SA* [1979] FSR 337 at 351, CA; *Rubycliff Ltd v Plastic Engineers Ltd* [1986] RPC 573. A claimant outside the jurisdiction may be required to give security for the undertaking: *Harman Pictures NV v Osborne* [1967] 2 All ER 324, [1967] 1 WLR 723.

13 *Hubbard v Vosper* [1972] 2 QB 84, [1972] 1 All ER 1073, CA; and see *Bodley Head Ltd v Flegon* [1972] 1 WLR 680, [1972] RPC 587; *Church of Scientology v Kaufman* (1972) 117 Sol Jo 72, CA; *Kennard v Lewis* [1983] FSR 346. See also *Cambridge Nutrition Ltd v British Broadcasting Corpn* [1990] 3 All ER 523, CA. As to the defence of fair dealing see PARAS 338-340 ante.

14 *Lion Laboratories Ltd v Evans* [1985] QB 526, [1984] 2 All ER 417, CA (employee not restrained from disclosing information about allegedly faulty breathalysers); *A-G v Observer Ltd, A-G v Times Newspapers Ltd* [1990] 1 AC 109 at 233, sub nom *A-G v Guardian Newspapers Ltd (No 2)* [1988] 3 All ER 545 at 638, HL (newspapers not restrained from publishing extracts from memoirs of ex-MI5 member because information had already been placed in the public domain by his breach of confidence); *Secretary of State for the Home Department v Central Broadcasting Ltd* [1993] EMLR 253 (affd [1993] EMLR 253 at 270, CA); *Times Newspapers Ltd v MGN Ltd* [1993] EMLR 443; but see *Associated Newspapers Group plc v News Group Newspapers Ltd* [1986] RPC 515. As to the defence of public interest see PARA 408 ante.

15 *Saunders v Smith* (1838) 3 My & Cr 711; *Rundell v Murray* (1821) Jac 311; *Platts v Button* (1815) Coop G 303; *Lewis v Chapman* (1840) 3 Beav 133; *Baily v Taylor* (1829) 1 Russ & M 73; *Allen v Lyon* (1884) 5 OR 615; *Cavendish House (Cheltenham) Ltd v Cavendish-Woodhouse Ltd* [1970] RPC 234, CA; *Kambrook Distributing Pty Ltd v Delaney* (1984) 4 IPR 79. Where the delay is short and the defendant has not suffered prejudice because

of the delay, an injunction may be granted: *Radley Gowns Ltd v Costas Spyrou (t/a 'Touch of Class' and 'Fiesta Girl')* [1975] FSR 455.

16 *Vermaat v Boncrest Ltd (No 2)* [2002] FSR 531, [2001] All ER (D) 167 (Mar).

17 See eg *County Sound plc v Ocean Sound Ltd* [1991] FSR 367, CA (passing off; no arguable case); *Mothercare UK Ltd v Penguin Books Ltd* [1988] RPC 113, CA (passing off; no arguable case).

18 *Sweet v Maugham* (1840) 11 Sim 51.

19 *Barfield v Nicholson* (1824) 2 Sim & St 1.

20 Such orders are known as search orders. As to search orders see CIVIL PROCEDURE vol 11 (2009) PARA 402 et seq.

21 *Greek City Co Ltd v Demetriou and Athanasiou* [1983] FSR 442; *Newsgroup Newspapers Ltd v Mirror Group Newspapers (1986) Ltd* [1991] FSR 487.

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415. Final injunction.

A claimant is entitled to a final injunction although he has not proved actual damage¹ and although the infringement² complained of is only a threat, provided that it is clearly established that, when published³, the work complained of will be an infringement⁴. The court must, however, be satisfied that damage is likely to ensue to the claimant⁵. A final injunction will not be refused merely because the claimant has known of the infringing work for some years and has been sent copies of it⁶, or because it is said that he must have known that the defendant would spend money in bringing out a new edition in the belief that it would not be interfered with⁷, or because he had taken no proceedings in respect of similar infringements of his copyright in the past⁸, or because the work is already in the public domain⁹. The conduct of the claimant must be such that it would be wholly unconscionable to grant the injunctive relief sought¹⁰. It is not any answer for the defendant to say that the claimant has long ceased to publish the work himself¹¹.

A perpetual injunction cannot be granted unless the legal owner of the copyright is joined as a party¹².

1 *Smith v Johnson* (1863) 4 Giff 632; *Campbell v Scott* (1842) 11 Sim 31; *Tinsley v Lacy* (1863) 1 Hem & M 747; *Kelly v Hooper* (1839) 4 Jur 21; *Sweet v Maugham* (1840) 11 Sim 51.

2 As to infringement of copyright see PARA 311 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

3 For the meaning of 'published' see PARA 63 ante.

4 *Morris v Wright* (1870) 5 Ch App 279, CA.

5 See *Borthwick v Evening Post* (1888) 37 ChD 449 at 462, CA, per Cotton LJ; *Ludlow Music Inc v Williams* [2002] EWHC 638 (Ch), [2002] All ER (D) 185 (Feb). Before the Supreme Court of Judicature Act 1873 (repealed), an injunction was granted by the Court of Chancery on the principle that an account of profits might only give partial and inadequate compensation, and because the sale of copies by the defendant was not only depriving the claimant of profits which he might make by the sale of his book, but might also injure him to an extent that could not be ascertained by an inquiry as to damages: *Hogg v Kirby* (1803) 8 Ves 215 at 223 per Lord Eldon LC; *Mawman v Tegg* (1826) 2 Russ 385 at 400.

6 *Pitman v Hine* (1884) 1 TLR 39; *Lewis v Chapman* (1840) 3 Beav 133.

7 *Hogg v Scott* (1874) LR 18 Eq 444 at 456 per Hall V-C.

8 *Maxwell v Somerton* (1874) 30 LT 11.

9 *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch), [2006] All ER (D) 276 (Mar) (in which an injunction was granted against further infringement of copyright and an order for the delivery up of all infringing copies of the work was made). The fact that all of the information contained in the work is now in the public domain does not give anyone any right to infringe the claimant's copyright in the work: *HRH Prince of Wales v Associated Newspapers Ltd* supra at 189 per Blackburne J.

10 *Habib Bank Ltd v Habib Bank AG Zurich* [1981] 2 All ER 650, [1981] 1 WLR 1265, CA (passing off). See also *Ocular Sciences Ltd v Aspect Vision Care Ltd*, *Geoffrey Harrison Galley v Ocular Vision Ltd* [1997] RPC 289 (where the court refused a final injunction in part because of the claimant's conduct).

11 *Weldon v Dicks* (1878) 10 ChD 247 at 261-262 per Malins V-C. It seems that there can be no such thing as abandonment of copyright, for the owner does not lose his sole right to copy during the term of copyright prescribed by the Copyright, Designs and Patents Act 1988 (see PARA 93 et seq ante) merely by not exercising it himself. However, it may be that, if a copyright owner took no steps to prevent user of his work by the public on

a large scale, he would not be entitled to restrain a person from making a similar use if such a person had expended money on the faith of such permitted public user: see *Platts v Button* (1815) Coop G 303; *Rundell v Murray* (1821) Jac 311. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

12 *Performing Right Society Ltd v London Theatre of Varieties Ltd* [1924] AC 1, HL; *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 (where the action was brought by an equitable owner). For provision by which, in a case where there has been an assignment of future copyright, the copyright, on coming into existence, automatically vests in the assignee see the Copyright, Designs and Patents Act 1988 s 91 (in effect overruling *Performing Right Society Ltd v London Theatre of Varieties Ltd* supra, in so far as that case related to the right of the assignees of future copyright to obtain an injunction); and PARA 162 ante.

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416. Form of injunction.

In general, the order of the court should restrain the defendant from infringing the copyright¹ in suit². The injunction should be clear as to the context within which it operates and as to the acts which it restrains³. The injunction granted should protect the claimant from a continuation of the infringements of his rights by the defendant based on the findings of fact which the court has made. However, the injunction must also be fair to the defendant and in determining the wording of the order the court must consider the degree to which there is a threat of infringement of the claimant's rights in the future, and must ensure that the order clearly identifies what the defendant can and cannot do⁴.

Where a considerable part of the defendant's work is shown to be an infringement of the claimant's copyright, an injunction will be granted in respect of the whole, unless the court can be satisfied by inquiry or otherwise that the infringement is confined to specific portions⁵. Where the infringing part is not severable, the injunction will be granted in respect of the whole⁶. In some cases the court will grant an injunction not only in respect of copyrights which have been infringed but also in respect of similar copyrights owned by the claimant where there is a likelihood that such copyrights would be infringed in the future⁷. In some cases injunctions have been refused to protect future copyrights not in existence at the date of the order⁸, but this is not an invariable practice⁹.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 *Jarrold v Houlston* (1857) 3 K & J 708 at 719; *Mawman v Tegg* (1826) 2 Russ 385 at 398 per Lord Eldon LC; *Lewis v Fullarton* (1839) 2 Beav 6; *Kelly v Morris* (1866) LR 1 Eq 697; *Hogg v Scott* (1874) LR 18 Eq 444 at 458.

3 *Coflexip SA v Stolt Comex Seaway MS Ltd* [1999] 2 All ER 593, [1999] FSR 473; affd [2001] 1 All ER 952, [2001] RPC 182, CA (patent).

4 *Coflexip SA v Stolt Comex Seaway MS Ltd* [1999] 2 All ER 593, [1999] FSR 473 (patent); *Microsoft Corp'n v Plato Technology Ltd* [1999] FSR 834 (affd [1999] IP & T 1, CA); *Department of Culture, Arts & Leisure (Northern Ireland) v The Automobile Association* [2001] All ER (D) 211 (Jan); *Sun Microsystems Inc v Amtec Computer Corp'n Ltd* [2006] EWHC 62 (Ch), [2006] All ER (D) 226 (Jan).

5 *Mawman v Tegg* (1826) 2 Russ 385 (inquiry ordered); *Jarrold v Houlston* (1857) 3 K & J 708; *Low v Ward* (1868) LR 6 Eq 415 (injunction confined to last six chapters of book); *Morris v Ashbee* (1868) LR 7 Eq 34 (advertisements excluded from injunction); *Blackie & Sons Ltd v Lothian Book Publishing Co Pty Ltd* (1921) 29 CLR 396, Aust HC. See also *Ravenscroft v Herbert and New English Library Ltd* [1980] RPC 193; *Nichols Advanced Vehicle Systems Inc v Rees* [1979] RPC 127. For an interlocutory injunction (now known as an interim injunction) relating to specific portions of a work see *Smith v Chatto* (1874) 31 LT 775.

6 *Kelly v Morris* (1866) LR 1 Eq 697; *MacMillan Publishers Ltd v Thomas Reed Publications Ltd* [1993] FSR 455.

7 *Phonographic Performance Ltd v Amusement Caterers (Peckham) Ltd* [1964] Ch 195, [1963] 3 All ER 493; *South African Music Rights Organisation Ltd v Trust Butchers (Pty) Ltd* 1978 (1) SA 1052, SA SC; *Performing Right Society Ltd v Berman* (1966) [1975] FSR 400; *Carlin Music Corp'n v Collins* [1979] FSR 548, CA; *Microsoft Corp'n v Electro-Wide Ltd* [1997] FSR 580.

8 *Football League Ltd v Littlewoods Pools Ltd* [1959] Ch 637, [1959] 2 All ER 546; *Cate v Devon and Exeter Constitutional Newspaper Co* (1889) 40 ChD 500 at 507 per North J; *Cox v Land and Water Journal Co* (1869) LR 9 Eq 324; cf *Bradbury v Sharp* [1891] WN 143; *TM Hall & Co v Whittington & Co* (1892) 18 VLR 525.

9 *TM Hall & Co v Whittington & Co* (1892) 18 VLR 525; *Winterbottom for the Western Australia Turf Club v Wintle* (1947) 50 WALR 58; *Microsoft Corp'n v Electro-Wide Ltd* [1997] FSR 580.

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417. Injunctions against service providers.

The High Court¹ has power to grant an injunction against a service provider², where that service provider has actual knowledge of another person using its service to infringe copyright³. In determining whether a service provider has actual knowledge for these purposes, a court must take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, must have regard to:

- 502 (1) whether a service provider has received a notice through a means of contact made available⁴ to a recipient of the service⁵; and
- 503 (2) the extent to which any notice includes:
 - 21
 - 26. (a) the full name and address of the sender of the notice⁶;
 - 27. (b) details of the infringement in question⁷.
 - 22

1 As to the High Court see COURTS vol 10 (Reissue) PARA 602 et seq.

2 'Service provider' means any person providing an information society service; and 'information society services' has the meaning set out in EC Parliament and Council Directive 2000/31 (OJ L178, 17.7.2000, p 1) art 2(a): Electronic Commerce (EC Directive) Regulations 2002, SI 2002/2013, reg 2(1); definitions applied by the Copyright, Designs and Patents Act 1988 s 97A(3) (s 97A added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 27(1)). Information society services are summarised in EC Parliament and Council Directive 2000/31 (OJ L178, 17.7.2000, p 1) recital 17 as covering 'any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service'.

3 Copyright, Designs and Patents Act 1988 s 97A(1) (as added: see note 2 supra). For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

4 Ie a means of contact made available in accordance with the Electronic Commerce (EC Directive) Regulations 2002, SI 2002/2013, reg 6(1)(c).

5 Copyright, Designs and Patents Act 1988 s 97A(2)(a) (as added: see note 2 supra).

6 Ibid s 97A(2)(b)(i) (as added: see note 2 supra).

7 Ibid s 97A(2)(b)(ii) (as added: see note 2 supra).

UPDATE

417 Injunctions against service providers

NOTE 2--See further Coroners and Justice Act 2009 s 143 (implementation of E-Commerce and Services directives: penalties).

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B. UNDERTAKING TO TAKE LICENCE OF RIGHT

418. Undertaking to take licence of right in infringement proceedings.

If in proceedings for infringement of copyright¹ in respect of which a licence is available as of right² the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the relevant tribunal³:

- 504 (1) no injunction⁴ may be granted against him⁵;
- 505 (2) no order for delivery⁶ up may be made⁷; and
- 506 (3) the amount recoverable against him by way of damages or on an account of profits⁸ may not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement⁹.

An undertaking may be given at any time before final order in the proceedings, without any admission of liability¹⁰.

Nothing in these provisions affects the remedies available in respect of an infringement committed before licences of right were available¹¹.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 Ie under the Copyright, Designs and Patents Act 1988 s 144 (as amended) (powers exercisable in consequence of report of Competition Commission: see PARA 192 ante) or under s 170, Sch 1 para 19 (see PARA 377 ante).

3 Ie, in the case of a licence under ibid s 144 (as amended) (see PARA 192 ante), the Copyright Tribunal (see PARA 207 ante) or, in the case of a licence under Sch 1 para 19 (see PARA 377 ante), the comptroller (see PARA 377 ante).

4 As to injunctive relief see PARA 412 et seq ante.

5 Copyright, Designs and Patents Act 1988 s 98(1)(a) (s 98(1) amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 23).

6 Ie under the Copyright, Designs and Patents Act 1988 s 99 (see PARA 420 post) in the case of a licence under ibid s 144 (as amended) (see PARA 192 ante), or under s 230 (see PARA 534 post) in the case of a licence under Sch 1 para 19 (see PARA 377 ante).

7 Ibid s 98(1)(b) (as amended: see note 5 supra).

8 As to damages and an account of profits see PARA 419 post.

9 Copyright, Designs and Patents Act 1988 s 98(1)(c) (as amended: see note 5 supra), Sch 1 para 19(2).

10 Ibid s 98(2), Sch 1 para 19(2).

11 Ibid s 98(3), Sch 1 para 19(2). See *Ocular Sciences Ltd v Aspect Vision Care Ltd*, Geoffrey Harrison Galley v *Ocular Vision Ltd* [1997] RPC 289 at 420.

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C. DAMAGES

419. Damages for infringement.

In a claim for infringement of copyright¹ it is not necessary to give proof of actual damage; the damages are at large² but, as with any other tort, are restricted to those which flow directly and naturally from the tortious act³. The normal measure of damage is the amount by which the copyright is depreciated, by the infringement, as a chose or thing in action⁴. Even in a case where the only damage appearing is that the infringement complained of tends to vulgarise the claimant's work, the claimant is entitled to nominal damages and costs⁵. The damages assessed may include, in addition to the amount which would have been received by the claimant if he had himself been able to sell the copies sold by the defendant⁶, a substantial sum for injury to trade by reason of the fact that the defendant's prices were lower than those usually charged by the claimant⁷. Where the claimant cannot show that he has lost sales to the defendant, the court may assess the damages on the basis of a reasonable royalty⁸. Other relevant considerations in the assessment of damages are the profit which the claimant would have made and the licence fee which he would have charged⁹.

Where in a claim for infringement of an intellectual property right the defendant knew, or had reasonable grounds to know, that he engaged in infringing activity, the damages awarded to the claimant must be appropriate to the actual prejudice he suffered as a result of the infringement¹⁰. When awarding such damages:

507 (1) all appropriate aspects must be taken into account, including in particular:
23

- 28. (a) the negative economic consequences, including any lost profits, which the claimant has suffered, and any unfair profits made by the defendant¹¹; and
- 29. (b) elements other than economic factors, including the moral prejudice caused to the claimant by the infringement¹²; or

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508 (2) where appropriate, they may be awarded on the basis of the royalties or fees which would have been due had the defendant obtained a licence¹³.

The court may in a claim for infringement of copyright, having regard to all the circumstances, and in particular to the flagrancy of the infringement¹⁴ and any benefit accruing to the defendant by reason of the infringement¹⁵, award such additional damages as the justice of the case may require¹⁶. The question whether such additional damages should be awarded may be dealt with at the inquiry as to damages¹⁷.

As an alternative to damages a claimant may have an account of the profits made by the defendant by the use of his work¹⁸; and the claimant must elect which remedy he will have¹⁹.

Damages may not be awarded where the infringement is shown to have been innocent²⁰. Damages for infringement of copyright may be additional to damages in respect of some other cause of action arising from the same subject matter²¹.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 *Exchange Telegraph Co Ltd v Gregory & Co* [1896] 1 QB 147 at 153, CA, per Lord Esher MR. This dictum was approved as being applicable to a claim for damages under the Copyright Act 1911 s 6 (replaced with alterations in wording by the Copyright Act 1956 s 17(1) (repealed) and the Copyright, Designs and Patents Act 1988 s 97(1): see PARA 407 ante) in *Fenning Film Service Ltd v Wolverhampton, Walsall and District Cinemas Ltd* [1914] 3 KB 1171 at 1174 per Horridge J. See also *Bernard v Berton* (1889) 16 QLR 73; *Carte v Dennis* (1900) 5 Terr LR 30.

3 *General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd* [1975] 2 All ER 173, [1975] 1 WLR 819, HL; *Gerber Garment Technology Inc v Lectra Systems Ltd* [1995] RPC 383 (affd in part [1997] RPC 443, CA); *Work Model Enterprises Ltd v Ecosystem Ltd and Clix Interiors Ltd* [1996] FSR 356; *USP plc v London General Holdings Ltd* [2005] EWCA Civ 931, [2006] FSR 65, [2005] All ER (D) 320 (Jul). As to the payment of costs see PARA 436 post.

4 See *USP plc v London General Holdings Ltd* [2005] EWCA Civ 931, [2006] FSR 65, [2005] All ER (D) 320 (Jul). As to circumstances in which an interim payment on account of damages may be made see *Ultraframe (UK) Ltd v Eurocell Building Plastics Ltd* [2005] EWHC 2111 (Ch), [2006] All ER (D) 155 (Jan).

5 *Hanfstaengl v WH Smith & Sons* [1905] 1 Ch 519 at 528 per Kekewich J.

6 *Pike v Nicholas* (1869) 5 Ch App 251; *General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd* [1975] 2 All ER 173, [1975] 1 WLR 819, HL; *Columbia Pictures Industries v Robinson* [1988] FSR 531; *Infabrics Ltd v Jaytex Ltd* [1985] FSR 75. Damages are recoverable in respect of all infringements whether proved to have resulted in lost sales or not. The relevance of lost sales is to enable the court to assess the damages by reference to lost profits; it is not a limitation on the recoverable loss: *Blayney (t/a Aardvark Jewelry) v Clogau St David's Gold Mines Ltd* [2002] EWCA Civ 1007, [2002] All ER (D) 242 (Jul). Cf *Peninsular Business Services Ltd v Citation plc* [2004] FSR 359.

7 *Birn Bros Ltd v Keene & Co Ltd* [1918] 2 Ch 281. It is not very clear from the report in this case whether Peterson J, in assessing the part of the damage which he calculated in relation to the actual sales of infringing copies, deducted from the amount received the cost of production, but it is submitted that this should be done when assessing damage for infringement. See *Pike v Nicholas* (1869) 5 Ch App 251 at 260; *Colburn v Simms* (1843) 2 Hare 543 at 560; *Delfe v Delamotte* (1857) 3 K & J 581.

8 *General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd* [1975] 2 All ER 173, [1975] 1 WLR 819, HL; *Interfirm Comparison (Australia) Pty Ltd v Law Society of New South Wales* [1977] RPC 137, NSW SC; *Gerber Garment Technology Inc v Lectra Systems Ltd* [1995] RPC 383 (affd in part [1997] RPC 443, CA); *Ludlow Music Inc v Williams* [2002] EWHC 638 (Ch), [2002] All ER (D) 185 (Feb); *Peninsular Business Services Ltd v Citation plc* [2004] FSR 359. The assessment of damages on such a basis is on the premise that there is a willing licensor and a willing licensee: *SPE International Ltd v PPC (UK) Ltd* [2002] EWHC 881 (Ch), [2002] All ER (D) 165 (May); *Blayney (t/a Aardvark Jewelry) v Clogau St David's Gold Mines Ltd* [2002] EWCA Civ 1007, [2002] All ER (D) 242 (Jul). See also *USP plc v London General Holdings Ltd* [2005] EWCA Civ 931, [2006] FSR 65, [2005] All ER (D) 320 (Jul).

9 *Meikle v Maufe* [1941] 3 All ER 144 (where it was said that the damages in respect of an infringement of an architect's copyright should not be assessed with direct reference to these considerations); but see *Performing Right Society Ltd v Bradford Corpn* (1921) MacG Cop Cas (1917-23) 309 (licence fee); *Stovin-Bradford v Volpoint Properties Ltd* [1971] Ch 1007, [1971] 3 All ER 570, CA (architect's licence fee). See also *Chabot v Davies* [1936] 3 All ER 221.

10 Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 3(1). Regulation 3 does not affect the operation of any enactment or rule of law relating to remedies for the infringement of intellectual property rights except to the extent that it is inconsistent with the provisions of reg 3: reg 3(3).

11 *Ibid* reg 3(2)(a)(i). See also note 10 supra.

12 *Ibid* reg 3(2)(a)(ii). See also note 10 supra.

13 *Ibid* reg 3(2)(b). See also note 10 supra.

14 Copyright, Designs and Patents Act 1988 s 97(2)(a). 'Flagrancy' has been interpreted as implying 'the existence of scandalous conduct, deceit and the like; it includes deliberate and calculated copyright infringements': *Ravenscroft v Herbert and New English Library Ltd* [1980] RPC 193 at 208 per Brightman J.

15 Copyright, Designs and Patents Act 1988 s 97(2)(b).

16 *Ibid* s 97(2). The 'additional damages' which the court is empowered to award by s 97(2) are compensatory damages, substantially equivalent to aggravated damages at common law, rather than exemplary damages: *Redrow Homes Ltd v Bett Bros plc* [1999] 1 AC 197, [1998] 1 All ER 385, HL;

Nottinghamshire Healthcare NHS Trust v News Group Newspapers Ltd [2002] EWHC 409 (Ch), [2002] RPC 962, [2002] All ER (D) 221 (Mar). The position is the same under the Copyright Act 1956 s 17(3) (repealed): see *Beloff v Pressdram Ltd* [1973] 1 All ER 241; *Redrow Homes Ltd v Bett Bros plc* supra. The Copyright, Designs and Patents Act 1988 s 97(2) provides for a measure of damages appropriate in cases of deliberate infringement and permits an element of restitution having regard to the benefit gained by the defendant: *Nottinghamshire Healthcare NHS Trust v News Group Newspapers Ltd* supra; *Phonographic Performance Ltd v Reader* [2005] EWHC 416 (Ch), [2006] IP & T 1, [2005] EMLR 574. An infringement of copyright committed in breach of an injunction restraining such infringement can found an award of additional damages under the Copyright, Designs and Patents Act 1988 s 97(2): *Sony Computer Entertainment Inc v Owen* [2002] EWHC 45, [2002] EMLR 34; *Phonographic Performance Ltd v Reader* supra.

17 *Lady Anne Tennant v Associated Newspapers Ltd* [1979] FSR 298; *Microsoft Corp v Electro-Wide Ltd* [1997] FSR 580 (both cases for summary judgement). Cf *Conde Nast Publication Ltd v MGN Ltd* [1998] FSR 427. The claimant can claim additional damages in the inquiry, even though they were not originally pleaded: *Brugger v Medicaid* [1996] FSR 362. A trial judge is not in a position to determine or to give a direction about whether the flagrancy of the infringement requires an award of additional damages under the Copyright, Designs and Patents Act 1988 s 97(2) as the question whether additional damages should be awarded for 'flagrant infringement' is a matter for the court making the inquiry as to damages, not the trial judge. If the trial judge wishes he may indicate his view that the court making the inquiry would be justified in taking into account the flagrancy of the infringement and in such a case the court taking the inquiry should have particular regard to the findings as to the flagrancy of the infringement made in the judgment: *MCA Records Inc v Charly Records Ltd* [2001] EWCA Civ 1441, [2003] 1 BCLC 93, [2002] EMLR 1.

18 As to the principles on which an account is taken see *Neilson v Betts* (1871) LR 5 HL 1; *De Vitre v Betts* (1873) LR 6 HL 319; *Caxton Publishing Co Ltd v Sutherland Publishing Co Ltd* [1939] AC 178, [1938] 4 All ER 389, HL; *Potton Ltd v Yorkclose Ltd* [1990] FSR 11; *Cala Homes (South) Ltd v Alfred McAlpine Homes East Ltd (No 2)* [1996] FSR 36. See also *Charles Church Developments plc v Cronin* [1990] FSR 1.

19 *De Vitre v Betts* (1873) LR 6 HL 319 (patent case); *Redrow Homes Ltd v Bett Bros plc* [1999] 1 AC 197, [1998] 1 All ER 385, HL. Where the claimant elects for an inquiry, he is not also entitled to additional damages pursuant to the Copyright, Designs and Patents Act 1988 s 97(2) (see the text to notes 14-16 supra): *Redrow Homes Ltd v Bett Bros plc* supra. The claimant is entitled to limited disclosure as to the extent of the defendant's sales and profitability prior to making his election: *Island Records Ltd v Tring International plc* [1995] 3 All ER 444, [1996] 1 WLR 1256; *Brugger v Medicaid* [1996] FSR 362. However, a defendant is not entitled to wait to see what the amount of a claim for an account for profits would be before deciding whether to oppose the right of the claimant to elect; and neither is a claimant's right to elect for an account of profits limited to cases in which there is something additional to the ordinary run of infringement, for instance where the infringement is deliberate: *Wienerworld Ltd v Vision Video Ltd* [1998] FSR 832.

20 See the Copyright, Designs and Patents Act 1988 s 97(1); and PARA 407 ante.

21 *Moore v News of the World Ltd* [1972] 1 QB 441, [1972] 1 All ER 915, CA (infringement of copyright and libel). See also *O'Mara (Michael) Books Ltd v Express Newspapers plc* [1999] FSR 49, [1998] EMLR 383 (order for disclosure of source of photocopy of book manuscript).

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D. DELIVERY UP, SEIZURE AND DISPOSAL

420. Order for delivery up.

Where a person:

509 (1) has an infringing copy¹ of a work in his possession, custody or control in the course of a business²; or

510 (2) has in his possession, custody or control an article specifically designed or adapted for making copies³ of a particular copyright work⁴, knowing or having reason to believe⁵ that it has been or is to be used to make infringing copies⁶,

the owner of the copyright⁷ in the work may apply to the court for an order that the infringing copy or article be delivered up to him or to such other person as the court may direct⁸.

An application for such an order may not be made after the end of the period after which the remedy of delivery up is not available⁹; and no order may be made unless the court also makes, or it appears to the court that there are grounds for making, an order¹⁰ as to the disposal of an infringing copy or other article¹¹. A person to whom an infringing copy or other article is delivered up in pursuance of an order under these provisions must, if an order as to the disposal of an infringing copy or other article is not made, retain it pending the making of an order, or the decision not to make such an order¹². Nothing in these provisions affects any other power of the court¹³.

An application for an order for delivery up in civil proceedings may not, however, be made after the end of the period of six years from the date on which the infringing copy or article in question was made, subject to the following provisions¹⁴. If, during the whole or any part of that period, the copyright owner is under a disability¹⁵ or is prevented by fraud or concealment from discovering the facts entitling him to apply for an order¹⁶, an application may be made at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts¹⁷.

1 For the meaning of 'infringing copy' see PARA 335 ante.

2 Copyright, Designs and Patents Act 1988 s 99(1)(a). For the meaning of 'business' see PARA 105 note 6 ante. As to the application of s 99 to the circumvention of technical devices applied to computer programs see s 296 (as substituted); and PARA 485 post.

3 For the meaning of 'copies' see PARA 314 ante.

4 For the meaning of 'copyright work' see PARA 57 ante.

5 For the meaning of 'know or have reason to believe' see PARA 334 ante.

6 Copyright, Designs and Patents Act 1988 s 99(1)(b).

7 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

8 Copyright, Designs and Patents Act 1988 s 99(1). In England and Wales a county court may entertain proceedings under s 99: s 115(1). A county court has jurisdiction under s 99 whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings: High Court and

County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(n). Nothing in the Copyright, Designs and Patents Act 1988 s 115 is to be construed as affecting the jurisdiction of the High Court: s 115(3). As to county courts see COURTS vol 10 (Reissue) PARA 701 et seq; and as to the High Court see COURTS vol 10 (Reissue) PARA 602 et seq. There can be no invariable rule as to the relief to be granted in intellectual property cases as in each case the court has a discretion to tailor the relief to match the wrong which has been committed and threatened: *Microsoft Corp v Plato Technology Ltd* [1999] FSR 834; affd [1999] IP & T 1, CA. The court will not exercise its jurisdiction in such a way as to cause much greater harm than is necessary to safeguard the legitimate interests of the claimant: *Ocular Sciences Ltd v Aspect Vision Care Ltd*, *Geoffrey Harrison Galley v Ocular Sciences Ltd* [1997] RPC 289 at 420 (in which an order for delivery up was refused).

9 le the period specified in the Copyright, Designs and Patents Act 1988 s 113: see the text to note 14 infra.

10 le an order under ibid s 114 (as amended): see PARA 422 post.

11 Ibid s 99(2).

12 Ibid s 99(3).

13 Ibid s 99(4).

14 Ibid s 113(1).

15 Ibid s 113(2)(a). 'Disability' has the same meaning as in the Limitation Act 1980 (see LIMITATION PERIODS vol 68 (2008) PARA 1170): Copyright, Designs and Patents Act 1988 s 113(3).

16 Ibid s 113(2)(b).

17 Ibid s 113(2).

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421. Right to seize infringing copies and other articles.

An infringing copy¹ of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner² would be entitled to apply for an order for delivery up³, may be seized and detained by him or a person authorised by him⁴. The right to seize and detain is exercisable subject to the following conditions⁵:

- 511 (1) before anything is seized under these provisions, notice of the time and place of the proposed seizure must be given to a local police station⁶;
- 512 (2) a person may for the purpose of exercising the right conferred by these provisions enter premises⁷ to which the public has access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business⁸ of his, and may not use any force⁹;
- 513 (3) at the time when anything is seized under these provisions there must be left at the place where it was seized a notice in the prescribed form¹⁰ containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made¹¹.

The right to seize and detain is also subject to any decision¹² of the court as to disposal of the infringing copy¹³.

1 For the meaning of 'infringing copy' see PARA 335 ante.

2 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

3 Ie an order under the Copyright, Designs and Patents Act 1988 s 99: see PARA 420 ante.

4 Ibid s 100(1). As to the application of s 100 to the circumvention of technical devices applied to computer programs see s 296 (as substituted); and PARA 485 post.

5 Ibid s 100(1).

6 Ibid s 100(2).

7 'Premises' includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft: ibid s 100(5). For the meaning of 'building' see PARA 79 ante.

8 For the meaning of 'business' see PARA 105 note 6 ante.

9 Copyright, Designs and Patents Act 1988 s 100(3).

10 'Prescribed' means prescribed by order of the Secretary of State: ibid s 100(5). Such an order of the Secretary of State must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 100(6). For the prescribed form of notice see the Copyright and Rights in Performances (Notice of Seizure) Order 1989, SI 1989/1006 art 2, Schedule. As to the Secretary of State see PARA 183 note 2 ante.

11 Copyright, Designs and Patents Act 1988 s 100(4).

12 Ie any decision of the court under ibid s 114 (as amended): see PARA 422 post.

13 Ibid s 100(1).

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422. Order as to disposal of infringing copy or other article.

An application may be made to the court¹ for an order that an infringing copy² or other article delivered up in pursuance of an order for delivery up in civil³ or criminal⁴ proceedings, or seized and detained in pursuance of the statutory right in that behalf⁵, must be forfeited to the copyright owner⁶ or destroyed or otherwise dealt with as the court may think fit, or for a decision that no such order should be made⁷.

In considering what order, if any, should be made, the court must consider whether other remedies available in a claim for infringement of copyright⁸ would be adequate to compensate the copyright owner and to protect his interests⁹. Where there is more than one person interested in a copy or other article¹⁰, the court must make such order as it thinks just and may in particular direct that the article be sold, or otherwise dealt with, and the proceeds divided¹¹. If the court decides that no order should be made, the person in whose possession, custody or control the copy or other article was before being delivered up or seized is entitled to its return¹².

Provision must be made by rules of court¹³ as to the service of notice on persons having an interest in the copy or other articles, and any such person is entitled to appear in proceedings for an order, whether or not he was served with notice¹⁴, and to appeal against any order made, whether or not he appeared¹⁵. An order does not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal¹⁶.

1 In England and Wales a county court may entertain proceedings under the Copyright, Designs and Patents Act 1988 s 114 (as amended): s 115(1). A county court has jurisdiction under the Copyright, Designs and Patents Act 1988 s 114 (as amended) whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings: High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(n). Nothing in the Copyright, Designs and Patents Act 1988 s 115 is to be construed as affecting the jurisdiction of the High Court: s 115(3). As to county courts see COURTS vol 10 (Reissue) PARA 701 et seq; and as to the High Court see COURTS vol 10 (Reissue) PARA 602 et seq.

2 For the meaning of 'infringing copy' see PARA 335 ante.

3 Ie in pursuance of an order under the Copyright, Designs and Patents Act 1988 s 99: see PARA 420 ante.

4 Ie in pursuance of an order under *ibid* s 108: see PARA 440 post.

5 Ie in pursuance of the right conferred by *ibid* s 100: see PARA 421 ante.

6 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

7 Copyright, Designs and Patents Act 1988 s 114(1). As to the application of s 114 (as amended) to the circumvention of technical devices applied to computer programs see s 296 (as substituted); and PARA 485 post.

8 As to infringement of copyright see PARA 311 et seq ante; and as to the remedies for infringement see PARA 410 et seq ante.

9 Copyright, Designs and Patents Act 1988 s 114(2).

10 References to a person having an interest in a copy or other article include any person in whose favour an order could be made in respect of it: (1) under *ibid* s 114 (as amended), or s 204 (as amended) (see PARA 713 post), or s 231 (as amended) (see PARA 535 post); (2) under the Registered Designs Act 1949 s 24D (as added)

(see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 767); (3) under the Trade Marks Act 1994 s 19 (including that provision as applied by the Community Trade Mark Regulations 2006, SI 2006/1027, reg 4) (see TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 463); or (4) under the Community Design Regulations 2005, SI 2005/2339, reg 1C (as added) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 779): Copyright, Designs and Patents Act 1988 s 114(6) (amended by the Trade Marks Act 1994 s 106(1), Sch 4 para 8(2); and the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 2(2), Sch 2 para 7). For the meaning of 'copy' see PARA 314 ante.

11 Copyright, Designs and Patents Act 1988 s 114(4).

12 Ibid s 114(5).

13 As to the procedure see CPR 63 (as amended); and Practice Direction--Patents and other Intellectual Property Claims PD63 (as amended).

14 Copyright, Designs and Patents Act 1988 s 114(3)(a).

15 Ibid s 114(3)(b).

16 Ibid s 114(3).

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423. Application for order for forfeiture of infringing copies or articles.

Where there have come into the possession of any person in connection with the investigation or prosecution of a relevant offence¹ infringing copies² of a copyright work³, or articles specifically designed or adapted for making copies⁴ of a particular copyright work⁵, that person may apply for an order for the forfeiture of the infringing copies or articles⁶. An application may be made: (1) where proceedings have been brought in any court for a relevant offence relating to some or all of the infringing copies or articles, to that court⁷; or (2) where no application for the forfeiture of the infringing copies or articles has been made under head (1) above, by way of complaint to a magistrates' court⁸.

On any such application, the court must make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles⁹. A court may infer for these purposes that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question, whether by reason of being of the same design or part of the same consignment or batch or otherwise¹⁰. An order may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making¹¹ and determination of any appeal¹².

Any person aggrieved by an order made under these provisions by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision to the Crown Court¹³.

Where any infringing copies or articles are forfeited under these provisions they must be destroyed in accordance with such directions as the court may give¹⁴. However, on making an order the court may direct that the infringing copies or articles to which the order relates, instead of being destroyed, are to be forfeited to the owner¹⁵ of the copyright in question or dealt with in such other way as the court considers appropriate¹⁶.

1 'Relevant offence' means an offence under the Copyright, Designs and Patents Act 1988 s 107(1), (2) or (2A) (as added) (criminal liability for making or dealing with infringing articles: see PARA 437 post), an offence under the Trade Descriptions Act 1968 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 471 et seq), or an offence involving dishonesty or deception: Copyright, Designs and Patents Act 1988 s 114A(2) (s 114A added by the Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002 s 3; and the Copyright, Designs and Patents Act 1988 s 114A(2) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 26(2)(iii)).

2 For the meaning of 'infringing copy' see PARA 335 ante.

3 Copyright, Designs and Patents Act 1988 s 114A(1)(a) (as added: see note 1 supra). For the meaning of 'copyright work' see PARA 57 ante.

4 For the meaning of 'copies' see PARA 314 ante.

5 Copyright, Designs and Patents Act 1988 s 114A(1)(b) (as added: see note 1 supra).

6 Ibid s 114A(1) (as added: see note 1 supra).

7 Ibid s 114A(3)(a) (as added: see note 1 supra).

8 Ibid s 114A(3)(b) (as added: see note 1 supra). As to complaints to a magistrates' court see MAGISTRATES vol 29(2) (Reissue) PARA 681.

9 Ibid s 114A(4) (as added: see note 1 supra).

10 Ibid s 114A(5) (as added: see note 1 supra).

11 Ie including any application under the Magistrates' Courts Act 1980 s 111 (application for case to be stated): see MAGISTRATES vol 29(2) (Reissue) PARA 885.

12 Copyright, Designs and Patents Act 1988 s 114A(7) (as added: see note 1 supra).

13 Ibid s 114A(6)(a) (as added: see note 1 supra). As to the Crown Court see COURTS vol 10 (Reissue) PARA 621 et seq.

14 Ibid s 114A(8) (as added: see note 1 supra).

15 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

16 Copyright, Designs and Patents Act 1988 s 114A(9) (as added: see note 1 supra).

UPDATE

423 Application for order for forfeiture of infringing copies or articles

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 1--'Relevant offence' also means an offence under the Business Protection from Misleading Marketing Regulations 2008, SI 2008/1276, or the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277: Copyright, Designs and Patents Act 1988 s 114A(2) (amended by SI 2008/1277).

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E. PREVENTION OF IMPORTATION

424. Infringing copies may be treated as prohibited goods.

The owner of the copyright¹ in a published² literary³, dramatic⁴ or musical⁵ work may give notice in writing to the Commissioners for Her Majesty's Revenue and Customs⁶ that he is the owner of the copyright in the work⁷ and that he requests the Commissioners, for a period specified in the notice, to treat as prohibited goods printed copies of the work which are infringing copies⁸. The period specified in such a notice must not exceed five years and must not extend beyond the period for which copyright is to subsist⁹.

The owner of the copyright in a sound recording¹⁰ or film¹¹ may give notice in writing to the Commissioners that he is the owner of the copyright in the work¹², that infringing copies of the work are expected to arrive in the United Kingdom¹³ at a time and a place specified in the notice¹⁴, and that he requests the Commissioners to treat the copies as prohibited goods¹⁵.

The Commissioners may treat as prohibited goods only infringing copies of works which arrive in the United Kingdom from outside the European Economic Area¹⁶ or from within that area but not having been entered for free circulation¹⁷.

When a notice is in force under these provisions, the importation of goods to which the notice relates, otherwise than by a person for his private and domestic use, is¹⁸ prohibited; but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods¹⁹.

1 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

2 For the meaning of 'published' see PARA 63 ante.

3 For the meaning of 'literary work' see PARA 67 ante.

4 For the meaning of 'dramatic work' see PARA 73 ante.

5 For the meaning of 'musical work' see PARA 73 ante.

6 The Commissioners for Her Majesty's Revenue and Customs are appointed under the Commissioners for Revenue and Customs Act 2005 s 1 and have taken over the functions of the former Inland Revenue and Her Majesty's Customs and Excise: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq; INCOME TAXATION. See also VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 13.

7 Copyright, Designs and Patents Act 1988 s 111(1)(a) (s 111 amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1)).

8 Copyright, Designs and Patents Act 1988 s 111(1)(b) (as amended: see note 7 supra). For the prescribed form of notice see the Copyright (Customs) Regulations 1989, SI 1989/1178, reg 2(1), Sch 1. For the meaning of 'infringing copy' see PARA 335 ante. A form to the like effect approved by the Commissioners may be used and a separate notice must be given in respect of each work: reg 2(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1)). As to the procedure on giving notice see PARA 426 post.

The Copyright, Designs and Patents Act 1988 s 111 (as amended) does not apply to goods placed in, or expected to be placed in, one of the situations referred to in EC Council Regulation 1383/2003 (OJ L328, 30.10.2004, p 16) art 1(1), in respect of which an application may be made under art 5(1): Copyright, Designs and Patents Act 1988 s 111(3B) (s 111(3A), (3B) added by the Copyright (EC Measures Relating to Pirated Goods and Abolition of Restrictions on the Import of Goods) Regulations 1995, SI 1995/1445, reg 2(1), (2); and

the Copyright, Designs and Patents Act 1988 s 111(3B) substituted by the Goods Infringing Intellectual Property Rights (Customs) Regulations 2004, SI 2004/1473, reg 12). As to applications under EC Council Regulation 1383/2003 (OJ L328, 30.10.2004, p 16) art 5(1) see the Goods Infringing Intellectual Property Rights (Customs) Regulations 2004, SI 2004/1473; and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 993.

9 Copyright, Designs and Patents Act 1988 s 111(2). As to duration of copyright see PARA 93 et seq ante.

10 For the meaning of 'sound recording' see PARA 84 ante.

11 For the meaning of 'film' see PARA 86 ante.

12 Copyright, Designs and Patents Act 1988 s 111(3)(a) (as amended: see note 7 supra).

13 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

14 Copyright, Designs and Patents Act 1988 s 111(3)(b).

15 Ibid s 111(3)(c) (as amended: see note 7 supra). For the prescribed form of notice see the Copyright (Customs) Regulations 1989, SI 1989/1178, reg 2(2), Sch 2. A form to the like effect approved by the Commissioners may be used and a separate notice must be given in respect of each work and in respect of each expected importation into the United Kingdom: reg 2(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1)). As to the procedure on giving notice see PARA 426 post.

16 Copyright, Designs and Patents Act 1988 s 111(3A)(a) (as added (see note 8 supra); and as amended (see note 7 supra)). The European Economic Area is that established under the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183).

17 Copyright, Designs and Patents Act 1988 s 111(3A)(b) (as added (see note 8 supra); and as amended (see note 7 supra)).

18 Ie subject to ibid s 111(3A) (as added and amended) (see the text to notes 16-17 supra) and s 111(3B) (as added) (see note 8 supra).

19 Ibid s 111(4) (amended by the Copyright (EC Measures Relating to Pirated Goods and Abolition of Restrictions on the Import of Goods) Regulations 1995, SI 1995/1445, reg 2(3)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(10) CIVIL ACTIONS AND REMEDIES/(ii) Particular Remedies/E. PREVENTION OF IMPORTATION/425. Power of Commissioners for Her Majesty's Revenue and Customs to make regulations.

425. Power of Commissioners for Her Majesty's Revenue and Customs to make regulations.

The Commissioners for Her Majesty's Revenue and Customs¹ may make regulations prescribing the form in which notice² to treat goods as prohibited goods is to be given and requiring a person giving notice to furnish the Commissioners with such evidence as may be specified in the regulations, either on giving notice or when the goods are imported, or at both those times³, and to comply with such other conditions as may be specified in the regulations⁴.

The regulations may in particular require a person giving such a notice:

- 514 (1) to pay such fees in respect of the notice as may be specified by the regulations⁵;
- 515 (2) to give such security as may be so specified in respect of any liability or expense which the Commissioners may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained⁶;
- 516 (3) to indemnify the Commissioners against any such liability or expense, whether security has been given or not⁷.

The regulations may make different provision as respects different classes of case to which they apply and may include such incidental and supplementary provisions as the Commissioners consider expedient⁸.

The regulations must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament⁹.

1 The Commissioners for Her Majesty's Revenue and Customs are appointed under the Commissioners for Revenue and Customs Act 2005 s 1 and have taken over the functions of the former Inland Revenue and Her Majesty's Customs and Excise: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq; INCOME TAXATION. See also VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 13.

2 I.e a notice under the Copyright, Designs and Patents Act 1988 s 111 (as amended): see PARA 424 ante.

3 Ibid s 112(1)(a) (s 112 amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1)).

4 Copyright, Designs and Patents Act 1988 s 112(1)(b). The Copyright (Customs) Regulations 1989, SI 1989/1178, have been made: see PARAS 424 notes 8, 15 ante, 426 post.

5 Copyright, Designs and Patents Act 1988 s 112(2)(a).

6 Ibid s 112 (2)(b) (as amended: see note 3 supra).

7 Ibid s 112 (2)(c) (as amended: see note 3 supra).

8 Ibid s 112(3) (as amended: see note 3 supra).

9 Ibid s 112(4).

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426. Procedure on giving notice.

In the case of a notice to treat as prohibited goods printed copies of a published literary, dramatic or musical work which are infringing copies¹, a separate notice must be given in respect of each work²; and in the case of a notice to treat as prohibited goods infringing copies of a sound recording or film³, a separate notice must be given in respect of each work and in respect of each expected importation into the United Kingdom⁴.

The notice⁵ must contain full particulars of the matters specified therein and must contain a declaration by the signatory that the information given by him in the notice is true⁶. The person giving the notice must furnish to the Commissioners for Her Majesty's Revenue and Customs a copy of the work specified in the notice at the time the notice is given and at that time, or at the time the goods to which the notice relates are imported, must furnish to them such evidence as they may reasonably require to establish his ownership of the copyright⁷ in such work⁸, that goods detained are infringing copies⁹ or that a person who has signed the notice as agent is duly authorised¹⁰.

The person giving the notice must give security or further security within such time and in such manner, whether by bond or by deposit of a sum of money, as the Commissioners may require, in respect of any liability or expense which they may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained¹¹. In every case, whether any security or further security is given or not, the person who has given the notice must keep the Commissioners indemnified against all such liability and expense incurred¹² by them¹³.

The person giving the notice must notify the Commissioners in writing of any change in the ownership of the copyright in the work specified in the notice or other change affecting the notice within 14 days of such change¹⁴.

The notice is deemed to have been withdrawn as from the expiry of 14 days from any change in ownership of the copyright specified in the notice, whether duly notified¹⁵ to the Commissioners or not¹⁶, or if the person giving the notice has failed to comply with any requirement of these provisions¹⁷.

1 I.e. a notice under the Copyright, Designs and Patents Act 1988 s 111(1): see PARA 424 ante. For the meaning of 'infringing copy' see PARA 335 ante.

2 Copyright (Customs) Regulations 1989, SI 1989/1178, reg 2(1).

3 I.e. a notice under the Copyright, Designs and Patents Act 1988 s 111(3): see PARA 424 ante.

4 Copyright (Customs) Regulations 1989, SI 1989/1178, reg 2(2). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

5 'Notice' means a notice given under either *ibid* reg 2(1) or reg 2(2) (see the text to notes 1-4 *supra*): reg 2(3).

6 *Ibid* reg 3. A fee of £30, plus VAT, in respect of the notice must be paid to the Commissioners for Her Majesty's Revenue and Customs at the time it is given: reg 4 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1)). The Commissioners for Her Majesty's Revenue and Customs are appointed under the Commissioners for Revenue and Customs Act 2005 s 1 and have taken over the functions of the former Inland Revenue and Her Majesty's Customs and Excise: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq; INCOME TAXATION. See also VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 13.

7 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

8 Copyright (Customs) Regulations 1989, SI 1989/1178, reg 5(a) (regs 5-9 amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1)).

9 Copyright (Customs) Regulations 1989, SI 1989/1178, reg 5(b) (as amended: see note 8 supra).

10 Ibid reg 5(c) (as amended: see note 8 supra).

11 Ibid reg 6 (as amended: see note 8 supra).

12 Ie all such liability and expenses as is mentioned in ibid reg 6: see the text to note 11 supra.

13 Ibid reg 7 (as amended: see note 8 supra).

14 Ibid reg 8 (as amended: see note 8 supra).

15 Ie in accordance with ibid reg 8 (as amended): see the text to note 14 supra.

16 Ibid reg 9(a) (as amended: see note 8 supra).

17 Ibid reg 9(b) (as amended: see note 8 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(10) CIVIL ACTIONS AND REMEDIES/(iii) Procedure/A. COMMENCEMENT OF CLAIM/427. Origin of claim.

(iii) Procedure

A. COMMENCEMENT OF CLAIM

427. Origin of claim.

Claims for infringement of copyright¹ must be brought in the Chancery Division of the High Court², a patents county court³ or a county court where there is also a Chancery district registry⁴.

The claim may include an injunction, declaration, damages for infringement or an account of profits, delivery up of all infringing copies in the possession of the defendant and costs⁵.

The court has the power to grant a number of interim remedies including interim injunctions⁶, orders for the detention, custody or preservation of relevant property or for the inspection of relevant property, freezing injunctions and search orders⁷.

1 As to infringement of copyright see PARA 311 et seq ante.

2 As to the High Court see COURTS vol 10 (Reissue) PARA 602 et seq.

3 The Central London County Court is the only designated Patent County Court: see the Patents County Court (Designation and Jurisdiction) Order 1994, SI 1994/1609, art 2; and PARA 588 post.

4 CPR 63.1, 13; Practice Direction--Patents and other Intellectual Property Claims PD63 para 18.1. There are Chancery district registries at Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle upon Tyne: para 18.2. A county court may entertain proceedings under the Copyright, Designs and Patents Act 1988 s 99 (orders for delivery up of infringing copies or other articles: see PARA 420 ante), s 102(5) (orders as to the exercise of rights by the copyright owner where an exclusive licensee has concurrent rights: see PARA 429 post), or s 114 (as amended) (orders as to disposal of infringing copies or other articles: see PARA 422 ante), whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings: see the Copyright, Designs and Patents Act 1988 s 115(1); and the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(n). Nothing in the Copyright, Designs and Patents Act 1988 s 115 is to be construed as affecting the jurisdiction of the High Court: s 115(3). As to county courts see COURTS vol 10 (Reissue) PARA 701 et seq.

5 As to the nature of the different remedies see PARA 412 et seq ante; and as to their combination in one claim see *Muddock v Blackwood* [1898] 1 Ch 58. As to costs see PARA 436 post.

6 As to interim injunctions see PARA 414 ante.

7 See CPR 25; and CIVIL PROCEDURE vol 11 (2009) PARA 315.

UPDATE

427 Origin of claim

NOTE 4--CPR Pt 63 substituted: SI 2009/2092.

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428. Parties.

Except where copyright¹ is subject to an exclusive licence², only the owner of the copyright may sue for its infringement³. One of a number of joint owners of copyright may sue alone⁴. Where two persons claim that a work is an infringement of the rights of one or other or both of them, they may be joint claimants, as common questions of fact arise⁵. An equitable assignee⁶ may not sue in his own name in respect of infringements of the right assigned, but must make the assignor a party to the claim⁷; and his rights will be postponed to those of a subsequent legal assignee⁸, unless that assignee acquired his rights with notice of the prior equitable assignment⁹. A partial assignee may sue in respect of that part of the copyright assigned to him without joining the assignor as a party¹⁰.

The claimant may, as in any other tort, choose to sue any one or more of a number of joint tortfeasors¹¹. Each of the acts restricted by the copyright¹², including the right to authorise¹³, is a separate right, and persons who infringe different rights in the same subject matter are not joint tortfeasors¹⁴.

The Crown may sue and be sued in respect of infringements of copyright¹⁵; but no injunction or order for delivery up of property will be granted against the Crown, and execution cannot be levied against it¹⁶.

1 For the meaning of 'copyright' see PARA 57 ante.

2 As to exclusive licences see PARA 429 post.

3 As to who is the owner of the copyright in a work see PARA 118 et seq ante. As to infringement of copyright see PARA 311 et seq ante.

4 *Cescinsky v George Routledge & Sons Ltd* [1916] 2 KB 325; and see *Dent v Turpin* (1861) 30 LJ Ch 495 (joint owners of trade mark). As to joint ownership see PARA 121 ante.

5 *Oxford and Cambridge Universities v George Gill & Sons* [1899] 1 Ch 55.

6 As to equitable assignment see PARA 165 ante.

7 *Performing Right Society Ltd v London Theatre of Varieties Ltd* [1924] AC 1 at 28, HL, per Lord Sumner; *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601; *Colburn v Duncombe* (1838) 9 Sim 151; *Three Rivers District Council v Governor and Co of the Bank of England* [1996] QB 292, [1995] 4 All ER 312, CA.

8 *Leyland v Stewart* (1876) 4 ChD 419; *Leader v Purday* (1849) 7 CB 4. As to assignment of copyright see PARA 160 ante.

9 *Erskine Macdonald Ltd v Eyles* [1921] 1 Ch 631; *Hodges v Welsh* (1840) 2 I Eq R 266 (notice given by publication in name of equitable assignee).

10 See the Copyright, Designs and Patents Act 1988 s 173(1); and PARA 161 ante. Cf *Dicks v Brooks* (1880) 15 ChD 22, CA.

11 Co Litt 232a; and see TORT vol 97 (2010) PARA 447.

12 For the meaning of 'acts restricted by the copyright' see PARA 311 ante.

13 See PARA 328 ante.

14 *Ash v Hutchinson & Co (Publishers) Ltd* [1936] Ch 489 at 506, [1936] 2 All ER 1496 at 1507, CA, per Greene LJ, and at 502 and 1504 per Romer LJ. In this case it was held that in one instance a claim for damages against publishers was barred by prior judgment against the author for infringement, as the claims were in respect of the same tort. A claimant is no longer debarred, by recovering judgment from one tortfeasor, from bringing a claim against another person liable as a joint tortfeasor in respect of the same damage: see the Civil Liability (Contribution) Act 1978 s 1; and TORT vol 97 (2010) PARA 450 et seq.

15 See the Copyright, Designs and Patents Act 1988 s 163(5); the Crown Proceedings Act 1947 s 3(1)(e) (as substituted); and PARAS 144, 410 ante.

16 See *ibid* ss 21, 25(4); and CROWN PROCEEDINGS AND CROWN PRACTICE.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(10) CIVIL ACTIONS AND REMEDIES/(iii) Procedure/B. PROCEEDINGS BY EXCLUSIVE LICENSEES/429. Proceedings by exclusive licensees.

B. PROCEEDINGS BY EXCLUSIVE LICENSEES

429. Proceedings by exclusive licensees.

An exclusive licensee¹ has, except as against the copyright owner², the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment³. His rights and remedies are concurrent with those of the copyright owner⁴.

Where a claim for infringement⁵ of copyright brought by the copyright owner or an exclusive licensee relates, wholly or partly, to an infringement in respect of which they have concurrent rights of action, the copyright owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the claim unless the other is either joined as a claimant or added as a defendant⁶. A copyright owner or exclusive licensee who is so added as a defendant is not liable for any costs unless he takes part in the proceedings⁷. These provisions⁸ do not affect the granting of interim relief⁹ on an application by a copyright owner or exclusive licensee alone¹⁰.

Where a claim for infringement of copyright is brought which relates, wholly or partly, to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action:

- 517 (1) the court must, in assessing damages¹¹, take into account the terms of the licence¹² and any pecuniary remedy already awarded or available to either of them in respect of the infringement¹³;
- 518 (2) no account of profits¹⁴ may be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement¹⁵; and
- 519 (3) the court must, if an account of profits is directed, apportion the profits between them as the court considers just, subject to any agreement between them¹⁶,

and these provisions apply whether or not the copyright owner and the exclusive licensee are both parties to the claim¹⁷.

The copyright owner must notify any exclusive licensee having concurrent rights before applying for an order for delivery up¹⁸ or exercising his right of seizure¹⁹; and the court may on the application of the licensee make such order for delivery up or, as the case may be, prohibiting or permitting the exercise by the copyright owner of his right of seizure, as it thinks fit having regard to the terms of the licence²⁰.

In a claim brought by an exclusive licensee a defendant may avail himself of any defence which would have been available to him if the claim had been brought by the copyright owner²¹.

1 The expression 'exclusive licensee' is not defined in the Copyright, Designs and Patents Act 1988, but for the meaning of 'exclusive licence' see PARA 176 ante.

2 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

3 Copyright, Designs and Patents Act 1988 s 101(1). Section 101 does not apply to a licence granted before 1 June 1957 (ie the date on which the Copyright Act 1956 (now repealed) came into force in the United Kingdom: see PARA 35 ante): Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 32. As to the rights of an assignee see PARA 166 ante.

4 Ibid s 101(2). References in the relevant provisions of Pt I (ss 1-179) (as amended) to the copyright owner are to be construed accordingly: s 101(2).

5 Ie a claim under ibid s 96: see PARA 410 ante.

6 Ibid s 102(1). Section 102 does not apply to a licence granted before 1 June 1957 (see note 3 supra): Sch 1 para 32.

7 Ibid s 102(2).

8 Ie ibid s 102(1), (2): see the text to notes 5-7 supra.

9 As to interim relief see PARA 414 ante.

10 Copyright, Designs and Patents Act 1988 s 102(3).

11 As to damages for infringement see PARA 419 ante.

12 Copyright, Designs and Patents Act 1988 s 102(4)(a)(i).

13 Ibid s 102(4)(a)(ii).

14 As to the remedy of an account of profits see PARA 419 ante.

15 Copyright, Designs and Patents Act 1988 s 102(4)(b).

16 Ibid s 102(4)(c).

17 Ibid s 102(4).

18 Ie an order under ibid s 99: see PARA 420 ante.

19 Ie the right conferred by ibid s 100: see PARA 421 ante.

20 Ibid s 102(5). A county court may entertain proceedings under s 102(5): s 115(1). A county court has jurisdiction under s 102(5) whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings: High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(n). Nothing in the Copyright, Designs and Patents Act 1988 s 115 is to be construed as affecting the jurisdiction of the High Court: s 115(3). As to county courts see COURTS vol 10 (Reissue) PARA 701 et seq; and as to the High Court see COURTS vol 10 (Reissue) PARA 602 et seq.

21 Ibid s 101(3). As to permitted acts and other defences see PARA 337 et seq ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(10) CIVIL ACTIONS AND REMEDIES/(iii) Procedure/C. INFRINGEMENTS ACTIONABLE BY NON-EXCLUSIVE LICENSEES/430. Certain infringements actionable by a non-exclusive licensee.

C. INFRINGEMENTS ACTIONABLE BY NON-EXCLUSIVE LICENSEES

430. Certain infringements actionable by a non-exclusive licensee.

A non-exclusive licensee¹ may bring a claim for infringement of copyright² if the infringing act was directly connected to a prior licensed act of the licensee³, and the licence is in writing and is signed by or on behalf of the copyright owner⁴ and expressly grants the non-exclusive licensee a right of action under these provisions⁵.

The non-exclusive licensee has the same rights and remedies available to him as the copyright owner would have had if he had brought the claim⁶. The rights granted under these provisions are concurrent with those of the copyright owner⁷.

In a claim brought by a non-exclusive licensee by virtue of these provisions a defendant may avail himself of any defence which would have been available to him if the claim had been brought by the copyright owner⁸.

1 A 'non-exclusive licensee' means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the copyright owner: Copyright, Designs and Patents Act 1988 s 101A(6) (s 101A added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 28). As to licences see PARA 175 et seq ante. For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

2 As to infringement of copyright see PARA 311 et seq ante.

3 Copyright, Designs and Patents Act 1988 s 101A(1)(a) (as added: see note 1 supra).

4 Ibid s 101A(1)(b)(i) (as added: see note 1 supra).

5 Ibid s 101A(1)(b)(ii) (as added: see note 1 supra). Section 102(1)-(4) (see PARA 429 ante) applies to a non-exclusive licensee who has a right of action by virtue of s 101A (as added) as it applies to an exclusive licensee: s 101A(5) (as so added).

6 Ibid s 101A(2) (as added: see note 1 supra).

7 Ibid s 101A(3) (as added: see note 1 supra). References in the relevant provisions of Pt I (ss 1-179) (as amended) to the copyright owner must be construed accordingly: s 101A(3) (as so added).

8 Ibid s 101A(4) (as added: see note 1 supra). As to permitted acts and other defences see PARA 337 et seq ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(10) CIVIL ACTIONS AND REMEDIES/(iii) Procedure/D. PRESUMPTIONS/431. Presumptions relevant to literary, dramatic, musical and artistic works.

D. PRESUMPTIONS

431. Presumptions relevant to literary, dramatic, musical and artistic works.

In proceedings brought for infringement of the copyright¹ in a literary², dramatic³, musical⁴ or artistic⁵ work or for infringement of moral rights⁶ the following presumptions apply⁷:

- 520 (1) where a name purporting to be that of the author⁸ appeared on copies⁹ of the work as published¹⁰ or on the work when it was made, the person whose name appeared is to be presumed, until the contrary is proved, to be the author of the work¹¹ and to have made it in circumstances¹² such that he is the first owner of the work¹³;
- 521 (2) where no name purporting to be that of the author so appeared but the work qualifies¹⁴ for copyright protection by reference to the country of first publication¹⁵ and a name purporting to be that of the publisher¹⁶ appeared on copies of the work as first published¹⁷, the person whose name appeared is to be presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication¹⁸;
- 522 (3) if the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it is to be presumed, in the absence of evidence to the contrary, that the work is an original work¹⁹ and that the claimant's allegations as to what was the first publication of the work and as to the country of first publication are correct²⁰.

In proceedings brought for infringement of the copyright²¹ in a computer program, where copies of the program are issued to the public²² in electronic form²³ bearing a statement:

- 523 (a) that a named person was the owner of copyright in the program at the date of issue of the copies²⁴; or
- 524 (b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specified year²⁵,

the statement is admissible as evidence of the facts stated and is to be presumed to be correct until the contrary is proved²⁶.

¹ ie proceedings brought by virtue of the Copyright, Designs and Patents Act 1988 Pt I Ch VI (ss 96-115) (as amended). For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

² For the meaning of 'literary work' see PARA 67 ante.

³ For the meaning of 'dramatic work' see PARA 73 ante.

⁴ For the meaning of 'musical work' see PARA 73 ante.

⁵ For the meaning of 'artistic work' see PARA 75 ante.

⁶ ie proceedings brought by virtue of the Copyright, Designs and Patents Act 1988 s 103 (see PARA 458 post) in respect of a right conferred by Pt I Ch IV (ss 77-89) (as amended) (see PARA 455 et seq post).

7 Ibid s 104(1). Section 104 does not apply to publication right: see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(b); and PARA 500 post. As to the presumptions relevant to database right see PARA 773 post.

8 For the meaning of 'author' see PARA 110 ante.

9 For the meaning of 'copies' see PARA 314 ante.

10 For the meaning of 'published' see PARA 63 ante.

11 Copyright, Designs and Patents Act 1988 s 104(2)(a). In order to rebut the presumption that the person whose name appeared was the owner of the copyright, it is not enough to show that another person was the author of the work; it is necessary to show affirmatively that the person named was not the owner of the copyright: see *Warwick Film Productions Ltd v Eisinger* [1969] 1 Ch 508, [1967] 3 All ER 367 (decided under the Copyright Act 1956 s 20(4) (repealed)), distinguishing *Hogg v Toye & Co Ltd* [1935] Ch 497, CA (where the Copyright Act 1911 s 6(3)(b) (repealed), which corresponded to the Copyright Act 1956 s 20(4) (repealed) but was much narrower in wording, was held merely to confer on the person named a standing in proceedings for infringement taken by him on behalf of the real owner of the copyright).

12 Ie in circumstances not falling within the Copyright, Designs and Patents Act 1988 s 11(2) (works produced in the course of employment: see PARA 118 ante), s 163 (Crown copyright: see PARA 144 et seq ante), s 165 (Parliamentary copyright: see PARA 150 et seq ante), or s 168 (copyright of certain international organisations: see PARA 155 et seq ante).

13 Ibid s 104(2)(b). In the case of a work alleged to be a work of joint authorship s 104(2) applies in relation to each person alleged to be one of the authors: s 104(3). For the meaning of 'work of joint authorship' see PARA 113 ante.

14 Ie by virtue of ibid s 155: see PARA 61 ante. As to qualification for copyright protection generally see PARA 59 ante.

15 Ibid s 104(4)(a). For the meaning of 'country' see PARA 59 note 4 ante.

16 For the meaning of 'publisher' see PARA 63 ante.

17 Copyright, Designs and Patents Act 1988 s 104(4)(b).

18 Ibid s 104(4). See *Waterlow Publishers Ltd v Rose* [1995] FSR 207, CA (lawyers' directory).

19 Copyright, Designs and Patents Act 1988 s 104(5)(a). As to the meaning of 'originality' see PARA 65 ante.

20 Ibid s 104(5)(b).

21 Ie proceedings brought by virtue of the provisions referred to in note 1 supra.

22 As to references to the issue to the public of copies of a work see PARA 322 ante.

23 For the meaning of 'in electronic form' see PARA 184 note 2 ante.

24 Copyright, Designs and Patents Act 1988 s 105(3)(a).

25 Ibid s 105(3)(b).

26 Ibid s 105(3). The presumption in s 105(3) applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public: s 105(4). The effect of this presumption is such that, in the absence of a positive case showing that the claimant was not the owner of the copyright and in the absence of any other defence, the claimant is entitled to summary judgment: see *Microsoft Corp v Electro-Wide Ltd* [1997] FSR 580 at 594.

The Copyright, Designs and Patents Act 1988 s 105(3) does not apply to publication right: see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(b); and PARA 500 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(10) CIVIL ACTIONS AND REMEDIES/(iii) Procedure/D. PRESUMPTIONS/432. Presumptions relevant to sound recordings and films.

432. Presumptions relevant to sound recordings and films.

In proceedings brought for infringement of the copyright¹ in a sound recording², where copies of the recording as issued to the public³ bear a label or other mark stating that a named person was the owner of copyright⁴ in the recording at the date of issue of the copies⁵, or that the recording was first published⁶ in a specified year or in a specified country⁷, the label or mark is admissible as evidence of the facts stated and is to be presumed to be correct until the contrary is proved⁸.

In proceedings brought for infringement of the copyright⁹ in a film¹⁰, or for infringement of the director's moral rights¹¹, where copies of the film as issued to the public bear a statement:

- 525 (1) that a named person was the director¹² or producer¹³ of the film¹⁴;
- 526 (2) that a named person was the principal director, the author¹⁵ of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film¹⁶;
- 527 (3) that a named person was the owner of copyright in the film at the date of issue of the copies¹⁷; or
- 528 (4) that the film was first published in a specified year or in a specified country¹⁸,

the statement is admissible as evidence of the facts stated and is to be presumed to be correct until the contrary is proved¹⁹.

Further, in proceedings brought for the infringement of copyright in a film, or for infringement of the director's moral rights in a film, where the film as shown in public²⁰ or communicated to the public²¹ bears a statement:

- 529 (a) that a named person was the director or producer of the film²²; or
- 530 (b) that a named person was the principal director of the film, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film²³; or
- 531 (c) that a named person was the owner of copyright in the film immediately after it was made²⁴,

the statement is admissible as evidence of the facts stated and is to be presumed to be correct until the contrary is proved²⁵.

1 In proceedings brought by virtue of the Copyright, Designs and Patents Act 1988 Pt I Ch VI (ss 96-115) (as amended). For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 For the meaning of 'sound recording' see PARA 84 ante.

3 As to references to the issue to the public of copies of a work see PARA 322 ante.

4 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

5 Copyright, Designs and Patents Act 1988 s 105(1)(a).

6 For the meaning of 'published' see PARA 63 ante.

7 Copyright, Designs and Patents Act 1988 s 105(1)(b). For the meaning of 'country' see PARA 59 note 4 ante.

8 Ibid s 105(1). The presumption in s 105(1) applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public: s 105(4). Section 105 (as amended) does not apply to publication right: see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(b); and PARA 500 post.

9 See note 1 supra.

10 For the meaning of 'film' see PARA 86 ante.

11 In proceedings brought by virtue of the Copyright, Designs and Patents Act 1988 s 103 (see PARA 458 post) in respect of a right conferred by Pt I Ch IV (ss 77-89) (as amended) (see PARA 455 et seq post).

12 For these purposes, a statement that a person was the director of a film is to be taken, unless a contrary indication appears, as meaning that he was the principal director of the film: ibid s 105(6) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(4)(c)).

13 For the meaning of 'producer' see PARA 110 note 3 ante.

14 Copyright, Designs and Patents Act 1988 s 105(2)(a) (amended by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(4)(a)).

15 For the meaning of 'author' see PARA 110 ante.

16 Copyright, Designs and Patents Act 1988 s 105(2)(aa) (added by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 6(4)).

17 Copyright, Designs and Patents Act 1988 s 105(2)(b).

18 Ibid s 105(2)(c).

19 Ibid s 105(2). The presumption in s 105(2) (as amended) applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public: s 105(4).

20 For the meaning of 'show in public' see PARAS 324-325 ante.

21 For the meaning of 'communication to the public' see PARA 326 ante.

22 Copyright, Designs and Patents Act 1988 s 105(5)(a) (amended by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(4)(a)).

23 Copyright, Designs and Patents Act 1988 s 105(5)(aa) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(4)(b)).

24 Copyright, Designs and Patents Act 1988 s 105(5)(b).

25 Ibid s 105(5) (amended by Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 8(1)(c)). The presumption in the Copyright, Designs and Patents Act 1988 s 105(5) (as amended) applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public or communicated to the public: s 105(5) (as so amended).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(10) CIVIL ACTIONS AND REMEDIES/(iii) Procedure/D. PRESUMPTIONS/433. Presumptions relevant to works subject to Crown copyright.

433. Presumptions relevant to works subject to Crown copyright.

In proceedings for infringement¹ of a literary², dramatic³ or musical⁴ work in which Crown copyright⁵ subsists, where there appears on printed copies⁶ of the work a statement of the year in which the work was first published commercially⁷, that statement is admissible as evidence of the fact stated and is presumed to be correct in the absence of evidence to the contrary⁸.

1 In proceedings brought by virtue of the Copyright, Designs and Patents Act 1988 Pt I Ch VI (ss 96-115) (as amended). As to infringement of copyright see PARA 311 et seq ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'Crown copyright' see PARA 144 ante.

6 For the meaning of 'copies' see PARA 314 ante.

7 For the meanings of 'publication' and 'commercial publication' see PARA 63 ante.

8 Copyright, Designs and Patents Act 1988 s 106. Section 106 does not apply to publication right: see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(b); and PARA 500 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(10) CIVIL ACTIONS AND REMEDIES/(iii) Procedure/E. PARTICULARS ETC/434. Particulars.

E. PARTICULARS ETC

434. Particulars.

By reason of the presumptions as to evidence¹ a claimant cannot be compelled to give particulars of his title before it is put in issue, although it is often done in practice². It is not essential for a claimant who intends to establish that substantial parts of his work have been copied to plead more than that his work has been reproduced by the defendant, but it is desirable to plead more precisely³. It is not necessary to allege that the reproduction complained of was in England⁴; but if infringement of a foreign copyright is alleged, this should be specifically pleaded⁵.

1 See PARAS 431-433 ante.

2 Where the originality of the claimant's work is relevant, particulars of originality may be ordered: *Elram International Actuators Ltd v Fluid Power Engineering Ltd* [1984] FSR 151.

3 *Oliver v Dickin* [1936] 2 All ER 1004. It is the practice to give particulars of the parts of the claimant's work alleged to have been copied: see *N & P Windows v Cego Ltd* [1989] FSR 56.

4 *Chappell v Davidson* (1856) 18 CB 194.

5 As to the justiciability of infringement of foreign copyrights see PARA 412 text and notes 10-13 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(10) CIVIL ACTIONS AND REMEDIES/(iii) Procedure/E. PARTICULARS ETC/435. Disclosure; requests for information; payment into court; expert witnesses.

435. Disclosure; requests for information; payment into court; expert witnesses.

The court may grant an order for disclosure to enable the copyright owner to track down the source of infringing copies or to prevent their being put into circulation¹. In intellectual property proceedings a person is not entitled to refuse to answer questions or give disclosure on the ground that to do so might tend to incriminate him, his spouse or civil partner².

Where the defendant in a claim for infringement sets up the defence that he has compiled the work from the original or common sources of information, the claimant is entitled to interrogate him to obtain full particulars as to the sources from which he alleges the work was compiled³.

In order to estimate the sum to be paid into court with the defence, the defendant is entitled to request information from the claimant as to the number of copies sold by the claimant within a limited time prior to and since the date when the infringement began⁴.

Because injunctive relief is normally sought in a claim for infringement, it is not possible for a defendant to protect his position as to costs simply by making a payment into court; and it is usually necessary to make a written offer expressed to be 'without prejudice save as to costs'⁵.

It is common practice to adduce expert evidence concerning the question of the similarities between the claimant's work and the alleged infringement. The primary duty of an expert is to the court and the court has the power and duty to restrict expert evidence to that which is reasonably required to resolve the proceedings⁶.

1 See *Norwich Pharmacal Co v Customs and Excise Comrs* [1974] AC 133, [1973] 2 All ER 943, HL; *Lagenes Ltd v It's At (UK) Ltd* [1991] FSR 492; *Jade Engineering (Coventry) Ltd v Antiference Window Systems Ltd* [1996] FSR 461; *Grant v Google* [2006] All ER (D) 243 (May); but see *Sega Enterprises Ltd v Alca Electronics* [1982] FSR 516, CA (customers' names refused at interim stage).

2 See the Supreme Court Act 1981 s 72(1), (2) (s 72(1) amended by the Civil Partnership Act 2004 s 261(1), Sch 27 para 69(1), (2)). As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 ss 59(5), 148(1), Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed.

With certain exceptions, the information supplied may not be used against the defendant, his spouse or civil partner in criminal proceedings for a related offence: see the Supreme Court Act 1981 s 72(3), (4) (s 72(3) amended by the Civil Partnership Act 2004 Sch 27 para 69(1), (3)). See also *Crest Homes plc v Marks* [1987] AC 829, [1987] 2 All ER 1074, HL; *Cobra Golf Ltd v Rata* [1998] PIQR P344, CA; *Det Danske Hedeselskabet v KDM International plc* [1994] 2 Lloyd's Rep 534. As to compilations see PARA 68 ante.

As to the privilege against incrimination of self or spouse see CIVIL PROCEDURE vol 11 (2009) PARA 580.

3 *Kelly v Wyman* (1869) 17 WR 399. See also *Rockwell International Corp v Serck Industries Ltd* [1988] FSR 187, CA. However, requests for information are necessary and it is normally necessary to interrogate to obtain information or admissions which are likely to be contained in pleadings, disclosable documents or witness statements: *Hall v Sevalco Ltd*, *Crompton v Sevalco Ltd* [1996] PIQR P344, CA; *Det Danske Hedeselskabet v KDM International plc* [1994] 2 Lloyd's Rep 534. As to compilations see PARA 68 ante.

4 *Wright v Goodlake* (1865) 13 LT 120.

5 See CPR 32.1. This codifies the procedure relating to 'Calderbank' offers, named after *Calderbank v Calderbank* [1976] Fam 93, [1975] 3 All ER 333, CA, and extended by *Cutts v Head* [1984] Ch 290, [1984] 1 All ER 597, CA. The composition of an effective 'Calderbank' offer in intellectual property disputes is often a matter of some nicety: see eg *Colgate Palmolive Ltd v Markwell Finance Ltd* [1990] RPC 197, CA; *C & H Engineering v F Klucznik & Son Ltd* [1992] FSR 667; *Brugger v Medicaid* [1996] FSR 362.

6 See CPR 35; and CIVIL PROCEDURE vol 11 (2009) PARA 838 et seq. A judge who has formed the opinion that an expert had seriously broken this duty may, in an appropriate case, refer the matter to the expert's professional body if he has one: *Pearce v Ove Arup Partnership Ltd (No 2)* [2001] All ER (D) 32 (Nov) at 61 per Jacob J.

UPDATE

435 Disclosure; requests for information; payment into court; expert witnesses

NOTE 2--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(10) CIVIL ACTIONS AND REMEDIES/(iii) Procedure/E. PARTICULARS ETC/436. Costs in discretion of court.

436. Costs in discretion of court.

The court has discretion as to whether costs are payable by one party to another, the amount of those costs and when they are to be paid¹.

An unsuccessful defendant cannot escape liability to pay costs by saying that he did not know he was doing wrong², nor on the ground that he was not given notice before the issue of the writ³, or that the damage done to the claimant was small⁴. However, the amount of the costs must be appropriate for the amount of the claim⁵. Where, however, the claimant has allowed the defendant to do the same thing without objection for years, he may be deprived of costs if he issues his writ without notice⁶.

No costs will be given to a successful defendant where he has acted in a way to induce the claimant to believe that an infringement has been committed⁷; and, where both works are of an immoral or indecent nature, no costs will be given on either side⁸. Where the claimant has alleged wholesale infringement but at trial establishes only part of his claim, the court, when considering its award of costs, has to assess who in reality was the successful party⁹.

1 CPR 44.3.1. As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

2 *Cooper v Whittingham* (1880) 15 ChD 501 at 507 per Jessel MR; *Anglo-Canadian Music Publishers Association Ltd v Winniffrith Bros* (1888) 15 OR 164.

3 *Upmann v Forester* (1883) 24 ChD 231 at 236-237 per Chitty J; *Wittman v Oppenheim* (1884) 27 ChD 260.

4 *Hanfstaengl v WH Smith & Sons* [1905] 1 Ch 519 at 528-529; but see *American Tobacco Co v Guest* [1892] 1 Ch 630.

5 See *Brown v Mcasso Music Production Ltd* [2005] EWCA Civ 1546, [2005] All ER (D) 145 (Nov).

6 *Walter v Steinkopff* [1892] 3 Ch 489 at 501 per North J.

7 *Cobbett v Woodward* (1872) LR 14 Eq 407 at 414; *Bolton v London Exhibitions Ltd and Weiners Ltd* (1898) 14 TLR 550 at 551; *Carlton v Mortimer* (1920) MacG Cop Cas (1917-23) 194; *Piddington v Philip* (1893) 14 NSW Eq 159.

8 *Baschet v London Illustrated Standard Co* [1900] 1 Ch 73; *Glyn v Weston Feature Film Co* [1916] 1 Ch 261; and see PARA 64 ante.

9 See *Re Elgindata Ltd (No 2)* [1993] 1 All ER 232, [1992] 1 WLR 1207, CA; *Lipkin Gorman (a firm) v Karpnale Ltd* [1992] 4 All ER 409, [1989] 1 WLR 1340, CA; *John Richardson Computers Ltd v Flanders (No 2)* [1994] FSR 144 (where the defendant was ordered to pay 30% of the claimant's costs and the claimant was ordered to pay 60% of the defendant's costs); *Peninsular Business Services Ltd v Citation plc (No 2)* [2004] FSR 376 (in which costs were awarded to the defendant even though the claimant established a claim).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(11) CRIMINAL OFFENCES/(i) Offences/437. Criminal liability for making or dealing with infringing articles etc.

(11) CRIMINAL OFFENCES

(i) Offences

437. Criminal liability for making or dealing with infringing articles etc.

A person commits an offence who, without the licence of the copyright owner¹:

- 532 (1) makes for sale² or hire³; or
- 533 (2) imports⁴ into the United Kingdom⁵ otherwise than for his private and domestic use⁶; or
- 534 (3) possesses in the course of a business⁷ with a view to committing any act infringing the copyright⁸; or
- 535 (4) in the course of a business: (a) sells or lets for hire⁹; or (b) offers or exposes for sale or hire¹⁰; or (c) exhibits in public¹¹; or (d) distributes¹²; or
- 536 (5) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright¹³,

an article which is, and which he knows or has reason to believe¹⁴ is, an infringing copy¹⁵ of a copyright work¹⁶.

A person commits an offence who:

- 537 (i) makes an article specifically designed or adapted for making copies¹⁷ of a particular copyright work¹⁸; or
- 538 (ii) has such an article in his possession¹⁹,

knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business²⁰.

A person who infringes copyright in a work by communicating the work to the public²¹ in the course of a business²², or otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright²³, commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work²⁴.

Where copyright is infringed, otherwise than by reception of a communication to the public:

- 539 (A) by the public performance²⁵ of a literary²⁶, dramatic²⁷ or musical work²⁸; or
- 540 (B) by the playing or showing in public²⁹ of a sound recording or film³⁰,

any person who caused³¹ the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed³².

A person guilty of any of these offences is liable to a penalty³³.

The statutory presumptions as to various matters connected with copyright³⁴ do not apply to proceedings for an offence under these provisions; but this is without prejudice to their application in proceedings for an order for delivery up³⁵ in criminal proceedings³⁶.

Where a criminal prosecution has been brought, the court may stay the proceedings pending the resolution of the issues between the parties in civil proceedings if the criminal prosecution is vexatious or an abuse of the process of the court³⁷.

1 As to the licence of the copyright owner see PARAS 121, 175 notes 4, 6 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

2 As to the meaning of 'sell' see PARA 330 note 6 ante.

3 Copyright, Designs and Patents Act 1988 s 107(1)(a).

4 As to the meaning of 'import' see PARA 329 note 4 ante.

5 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

6 Copyright, Designs and Patents Act 1988 s 107(1)(b).

7 As to the meaning of 'possession in the course of a business' see PARA 330 notes 4, 5 ante.

8 Copyright, Designs and Patents Act 1988 s 107(1)(c). As to infringement of copyright see PARA 311 et seq ante.

9 Ibid s 107(1)(d)(i).

10 Ibid s 107(1)(d)(ii). As to the meaning of 'offer or expose for sale or hire' see PARA 330 notes 7, 8 ante. The test of 'selling' an article is objective in the sense that it is necessary to consider only the transaction between the parties and not what was in their minds: *Phillips v Holmes* [1988] RPC 613.

11 Copyright, Designs and Patents Act 1988 s 107(1)(d)(iii). As to the meaning of 'exhibit in public' see PARA 330 note 10 ante.

12 Ibid s 107(1)(d)(iv). As to the meaning of 'distribute' see PARA 330 note 11 ante.

13 Ibid s 107(1)(e). See *Irvine v Carson* (1991) 22 IPR 107; *Irvine v Hanna-Rivero* (1991) 23 IPR 295 (informal swap of computer games via an enthusiast's network held to amount to such distribution).

14 As to the meaning of 'know or have reason to believe' see PARA 334 ante. Cf *Hooi v Brophy* (1984) 3 IPR 16; *Pontello v Giannotis* (1989) 16 IPR 174.

15 For the meaning of 'infringing copy' see PARA 335 ante.

16 Copyright, Designs and Patents Act 1988 s 107(1). As to offences by bodies corporate see PARA 438 post. For the meaning of 'copyright work' see PARA 57 ante. As to what evidence is required to prove title and to prove that a copy is an infringing copy see *Musa v Le Maitre* [1987] FSR 272, DC (expert evidence admissible).

17 For the meaning of 'copies' see PARA 314 ante. As to articles specifically designed or adapted for making copies see PARA 331 ante.

18 Copyright, Designs and Patents Act 1988 s 107(2)(a).

19 Ibid s 107(2)(b).

20 Ibid s 107(2).

21 As to infringement by communication to the public see PARA 326 ante.

22 Copyright, Designs and Patents Act 1988 s 107(2A)(a) (s 107(2A) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 26(1)(a)).

23 Copyright, Designs and Patents Act 1988 s 107(2A)(b) (as added: see note 22 supra).

24 Ibid s 107(2A) (as added: see note 22 supra).

25 As to infringement by the public performance of a work see PARA 324 ante.

26 For the meaning of 'literary work' see PARA 67 ante.

27 For the meaning of 'dramatic work' see PARA 73 ante.

28 Copyright, Designs and Patents Act 1988 s 107(3)(a). For the meaning of 'musical work' see PARA 73 ante.

29 As to infringement by playing or showing in public a sound recording or film see PARA 324 ante. For the meaning of 'sound recording' see PARA 84 ante; and for the meaning of 'film' see PARA 86 ante.

30 Copyright, Designs and Patents Act 1988 s 107(3)(b).

31 A person 'causes' the public performance of a literary, dramatic or musical work if it is performed by himself, his servants or agents but not otherwise: *Russell v Briant* (1849) 8 CB 836 (owner of premises not liable by letting premises to another); *Marsh v Conquest* (1864) 17 CBNS 418; *Kelly's Directories Ltd v Gavin and Lloyds* [1902] 1 Ch 631, CA; *Lyon v Knowles* (1863) 5 B & S 751, Ex Ch (owner of theatre not liable where he hired out the theatre to another who provided the dramatic corps and selected the plays to be performed); *Monaghan v Taylor* (1886) 2 TLR 685 (person who hired another to perform and exercised no supervision or control over the works performed liable as this was evidence of agency and authority to perform the works complained of); *Karno v Pathé Frères* (1908) 99 LT 114 (person who delivered film to an exhibitor not liable).

32 Copyright, Designs and Patents Act 1988 s 107(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 9(2)).

33 A person guilty of an offence under head (1), (2), (4)(d) or (5) in the text is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both (Copyright, Designs and Patents Act 1988 s 107(4)(a)), or on conviction on indictment to a fine or imprisonment for a term not exceeding ten years or both (s 107(4)(b) (amended by the Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002 s 1(1), (2)). See *R v Carter* [1993] FSR 303, CA (nine months imprisonment suspended for two years for making and distributing pirate videos); *R v Dukett* [1998] 2 Cr App Rep (S) 59, CA (27 months imprisonment on four counts of making for sale and distributing pirate CD ROM discs). As to the modification of the Copyright, Designs and Patents Act 1988 s 107(4) (as amended) in the case of publication right see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(3)(a); and PARA 500 post.

A person guilty of an offence in relation to the infringement of copyright by communicating a work to the public (ie an offence under the Copyright, Designs and Patents Act 1988 s 107(2A) (as added): see the text to notes 21-24 supra) is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both (s 107(4A)(a) (s 107(4A) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 26(1)(b))), or on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both (Copyright, Designs and Patents Act 1988 s 107(4A) (b) (as so added)).

A person guilty of any other offence under these provisions is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or to both: s 107(5). As to the modification of s 107(5) in the case of publication right see the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(3)(a); and PARA 500 post.

The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

34 Ie the Copyright, Designs and Patents Act 1988 ss 104-106 (as amended): see PARAS 431-433 ante.

35 Ie an order under *ibid* s 108 (as amended): see PARA 440 post.

36 *Ibid* s 107(6).

37 *Imperial Tobacco Ltd v A-G* [1981] AC 718 at 752, [1980] 1 All ER 866 at 884, HL; and see *Thames & Hudson Ltd v Design and Artists Copyright Society Ltd* [1995] FSR 153 (stay refused).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(11) CRIMINAL OFFENCES/(i) Offences/438. Offences by body corporate; liability of officers.

438. Offences by body corporate; liability of officers.

Where an offence relating to criminal liability for making or dealing with infringing articles etc¹ committed by a body corporate² is proved to have been committed with the consent or connivance³ of a director⁴, manager⁵, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly⁶.

1 le an offence under the Copyright, Designs and Patents Act 1988 s 107 (as amended): see PARA 437 ante.

2 The offence involves knowledge or reason to believe and, since a company can act only through its servants or officers, it is necessary to ask whose guilty mind will render the company criminally liable: see eg *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705, HL; *Tesco Stores Ltd v Brent London Borough Council* [1993] 2 All ER 718, [1993] 1 WLR 1037, DC (offence under the Video Recordings Act 1984 s 11(1)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38. As to bodies corporate see COMPANIES; CORPORATIONS.

3 'Connive' means that a person is aware of what is going on, turns a blind eye and does nothing about it: see *Huckerby v Elliott* [1970] 1 All ER 189.

4 In relation to a body corporate whose affairs are managed by its members, 'director' means a member of the body corporate: Copyright, Designs and Patents Act 1988 s 110(2).

5 'Manager' is likely to mean someone who is connected with the management of the affairs of the company as a whole: see *Gibson v Barton* (1875) LR 10 QB 329; *Registrar of Restrictive Trading Agreements v WH Smith & Son Ltd* [1969] 3 All ER 1065, [1969] 1 WLR 1460, CA; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL; *R v Boal* [1992] QB 591, [1992] 3 All ER 177, CA; and COMPANIES vol 14 (2009) PARA 312.

6 Copyright, Designs and Patents Act 1988 s 110(1).

UPDATE

438 Offences by body corporate; liability of officers

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(11) CRIMINAL OFFENCES/(ii) Effect of Admissions/439. Admissions in connected civil proceedings.

(ii) Effect of Admissions

439. Admissions in connected civil proceedings.

Where, in civil proceedings for infringement of any rights pertaining to any intellectual property¹ or in passing off² or to obtain disclosure relating to any such infringement³, a person answers a question put to him or discloses information pursuant to an order made in such proceedings, any statement or admission by him is inadmissible in proceedings for any offence committed by or in the course of the infringement or passing off to which the civil proceedings relate or any other offence committed in connection with that infringement or passing off which involves fraud or dishonesty⁴.

1 'Intellectual property' includes any copyright or design right: see the Supreme Court Act 1981 s 72(5). As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 ss 59(5), 148(1), Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed. As to design right see PARA 501 et seq post.

2 As to passing off see PARA 14 ante.

3 Eg a claim for disclosure brought under the principle set out in *Norwich Pharmacal Co v Customs and Excise Comrs* [1974] AC 133, [1973] 2 All ER 943, HL.

4 See the Supreme Court Act 1981 s 72 (amended by the Civil Partnership Act 2004 s 261(1), Sch 27 para 69). As to the applicability of s 72 (as amended) in civil contempt proceedings see *Cobra Golf Ltd v Rata* [1998] Ch 109, [1997] 2 All ER 150, sub nom *Cobra Golf Inc and Cobra Golf Ltd v Rata (No 2)* [1997] FSR 317. As to the privilege against self-incrimination see CIVIL PROCEDURE vol 11 (2009) PARA 580.

UPDATE

439 Admissions in connected civil proceedings

NOTE 1--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(11) CRIMINAL OFFENCES/(iii) Enforcement/440. Order for delivery up in criminal proceedings.

(iii) Enforcement

440. Order for delivery up in criminal proceedings.

The court before which proceedings are brought against a person for an offence relating to criminal liability for making or dealing with infringing articles etc¹ may, if satisfied that at the time of his arrest or charge²:

- 541 (1) he had in his possession, custody or control in the course of a business³ an infringing copy⁴ of a copyright work⁵; or
- 542 (2) he had in his possession, custody or control an article specifically designed or adapted for making copies⁶ of a particular copyright work, knowing or having reason to believe⁷ that it had been or was to be used to make infringing copies⁸,

order that the infringing copy or article be delivered up to the copyright owner⁹ or to such other person as the court may direct¹⁰.

An order may be made by the court of its own motion or on the application of the prosecutor, and may be made whether or not the person is convicted of the offence, but may not be made:

- 543 (a) after the end of the period¹¹ after which the remedy of delivery up is not available¹²; or
- 544 (b) if it appears to the court unlikely that any order¹³ as to the disposal of an infringing copy or other article will be made¹⁴.

An appeal lies from an order made under these provisions by a magistrates' court to the Crown Court¹⁵.

A person to whom an infringing copy or other article is delivered up in pursuance of an order under these provisions must retain it pending the making¹⁶ of an order, or the decision not to make an order, as to the disposal of an infringing copy or other article¹⁷.

Nothing in these provisions affects the powers of the court¹⁸ to order forfeiture in criminal proceedings¹⁹.

1 le an offence under the Copyright, Designs and Patents Act 1988 s 107 (as amended): see PARA 437 ante.

2 A person is treated as charged with an offence when he is orally charged or is served with a summons or indictment: *ibid* s 108(2)(a).

3 For the meaning of 'business' see PARA 105 note 6 ante. As to the meaning of 'possession in the course of a business' see PARA 330 notes 4, 5 ante.

4 For the meaning of 'infringing copy' see PARA 335 ante.

5 Copyright, Designs and Patents Act 1988 s 108(1)(a). For the meaning of 'copyright work' see PARA 57 ante.

6 For the meaning of 'copies' see PARA 314 ante. As to articles specifically designed or adapted for making copies see PARA 331 ante.

7 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

- 8 Copyright, Designs and Patents Act 1988 s 108(1)(b).
- 9 As to who is the owner of the copyright in a work see PARA 118 et seq ante.
- 10 Copyright, Designs and Patents Act 1988 s 108(1).
- 11 An order must not, in any case, be made after the end of the period of six years from the date on which the infringing copy or article in question was made: *ibid* s 113(4).
- 12 *Ibid* s 108(3)(a).
- 13 *Ie* an order under *ibid* s 114 (as amended): see PARA 422 ante.
- 14 *Ibid* s 108(3)(b).
- 15 *Ibid* s 108(4)(a).
- 16 *Ie* under *ibid* s 114 (as amended): see PARA 422 ante.
- 17 *Ibid* s 108(5).
- 18 *Ie* the powers of the court under the Powers of Criminal Courts (Sentencing) Act 2000 s 143: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 481.
- 19 Copyright, Designs and Patents Act 1988 s 108(6) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 115).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(11) CRIMINAL OFFENCES/(iii) Enforcement/441. Search warrants.

441. Search warrants.

Where a justice of the peace¹ is satisfied by information on oath² given by a constable³ that there are reasonable grounds for believing that an offence relating to the infringement of copyright⁴ has been or is about to be committed in any premises⁵ and that evidence that such an offence has been or is about to be committed is in those premises⁶, he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary⁷. Such a warrant may authorise persons to accompany any constable executing the warrant⁸. A warrant remains in force for three months from the date of its issue⁹.

In executing a warrant issued under these provisions, a constable may seize an article if he reasonably believes that it is evidence that any offence¹⁰ has been or is about to be committed¹¹.

1 As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq.

2 'Oath' includes affirmation and declaration: Interpretation Act 1978 s 5, Sch 1. As to oaths, affirmations and declarations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

3 As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

4 Ie an offence under the Copyright, Designs and Patents Act 1988 s 107(1), (2) or (2A) (as added): see PARA 437 ante.

5 Ibid s 109(1)(a) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 26(2)(i)). For these purposes, 'premises' includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft: Copyright, Designs and Patents Act 1988 s 109(5) (amended by the Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002 s 2(1), (2)(c)). For the meaning of 'building' see PARA 79 ante.

6 Copyright, Designs and Patents Act 1988 s 109(1)(b).

7 Ibid s 109(1). The power conferred by s 109(1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in the Police and Criminal Evidence Act 1984 s 9(2) (certain classes of personal or confidential material: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 874): Copyright, Designs and Patents Act 1988 s 109(2). For the meanings of 'England' and 'Wales' see PARA 3 note 1 ante.

8 Ibid s 109(3)(a).

9 Ibid s 109(3)(b) (amended by the Serious Organised Crime and Police Act 2005 ss 174(2), 178(8), Sch 16 para 6(1), (2)).

10 Ie any offence under the Copyright, Designs and Patents Act 1988 s 107(1), (2) or (2A) (as added): see PARA 437 ante.

11 Ibid s 109(4) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 26(2)(ii)). As to additional powers of seizure from premises when exercising the power under the Copyright, Designs and Patents Act 1988 s 109(4) (as amended) and the obligation to return excluded and special procedure material see the Criminal Justice and Police Act 2001 ss 50, 55, Sch 1 Pt 1 para 48, Sch 1 Pt 3 para 106; and CRIMINAL LAW, EVIDENCE AND PROCEDURE.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(11) CRIMINAL OFFENCES/(iii) Enforcement/442. Enforcement by local weights and measures authority.

442. Enforcement by local weights and measures authority.

As from a day to be appointed¹, it is the duty of every local weights and measures authority² to enforce within its area the provisions³ relating to criminal liability for making or dealing with articles infringing copyright etc⁴.

1 The Copyright, Designs and Patents Act 1988 s 107A is added by the Criminal Justice and Public Order Act 1994 s 165(1), (2) as from a day to be appointed: see s 172(2). At the date at which this volume states the law no such day had been appointed.

2 As to local weights and measures authorities see the Weights and Measures Act 1985 s 69 (as amended); and WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 20.

3 In the Copyright, Designs and Patents Act 1988 s 107 (as amended): see PARA 437 ante.

4 Ibid s 107A(1) (as added: see note 1 supra). The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of the Copyright, Designs and Patents Act 1988 s 107A (as added) by such an authority as in relation to the enforcement of the Trade Descriptions Act 1968: (1) s 27 (power to make test purchases: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 508); (2) s 28 (power to enter premises and inspect and seize goods and documents: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 509); (3) s 29 (obstruction of authorised officers: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 511); and (4) s 33 (compensation for loss etc of goods seized: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 509): Copyright, Designs and Patents Act 1988 s 107A(2) (as so added). Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 applies as if the Copyright, Designs and Patents Act 1988 s 107 (as amended) were contained in the Trade Descriptions Act 1968 and as if the functions of any person in relation to the enforcement of the Copyright, Designs and Patents Act 1988 s 107 (as amended) were functions under the Trade Descriptions Act 1968: Copyright, Designs and Patents Act 1988 s 107A(4) (as so added).

Nothing in the Copyright, Designs and Patents Act 1988 s 107A (as added) is to be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence: s 107A(5) (as so added).

UPDATE

442 Enforcement by local weights and measures authority

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 1--Day now appointed: SI 2007/621.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(12) INTERNATIONAL ASPECTS OF COPYRIGHT LAW/(i) Application of Legislation/A. COUNTRIES TO WHICH COPYRIGHT PROVISIONS EXTEND/443. Territorial extent of copyright law.

(12) INTERNATIONAL ASPECTS OF COPYRIGHT LAW

(i) Application of Legislation

A. COUNTRIES TO WHICH COPYRIGHT PROVISIONS EXTEND

443. Territorial extent of copyright law.

The provisions of Part I of the Copyright, Designs and Patents Act 1988¹ extend to England and Wales, Scotland and Northern Ireland². For the purposes of those provisions, the territorial waters of the United Kingdom³ are to be treated as part of the United Kingdom⁴.

The provisions apply to:

- 545 (1) things done in the United Kingdom sector of the continental shelf⁵ on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as they apply to things done in the United Kingdom⁶;
- 546 (2) things done on a British ship⁷, aircraft⁸ or hovercraft⁹ as they apply to things done in the United Kingdom¹⁰.

1 Ie the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

2 Ibid s 157(1). For the meanings of 'England' and 'Wales' see PARA 3 note 1 ante.

3 For the meaning of 'United Kingdom' see PARA 3 note 1 ante. As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 124 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 31.

4 Copyright, Designs and Patents Act 1988 s 161(1). Section 161 does not apply in relation to anything done before 1 August 1989 (ie the day on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante): s 170, Sch 1 para 38.

5 'The United Kingdom sector of the continental shelf' means the area designated by order under the Continental Shelf Act 1964 s 1(7) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1636): Copyright, Designs and Patents Act 1988 s 161(3).

6 Ibid s 161(2).

7 'British ship' means a ship which is a British ship for the purposes of the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 230): Copyright, Designs and Patents Act 1988 s 162(2) (definition amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 84(a)).

8 'British aircraft' means an aircraft registered in the United Kingdom: Copyright, Designs and Patents Act 1988 s 162(2). As to the registration of aircraft see AIR LAW vol 2 (2008) PARA 368.

9 'British hovercraft' means a hovercraft registered in the United Kingdom: ibid s 162(2). As to hovercraft see AIR LAW vol 2 (2008) PARA 361; SHIPPING AND MARITIME LAW vol 93 (2008) PARA 381 et seq.

10 Ibid s 162(1). Section 162 (as amended) does not apply in relation to anything done before 1 August 1989: Sch 1 para 39.

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444. Extension to areas within jurisdiction.

Her Majesty may by Order in Council¹ direct that Part I of the Copyright, Designs and Patents Act 1988² is to extend, subject to such exceptions and modifications as may be specified in the order, to any of the Channel Islands³, the Isle of Man⁴ or any colony⁵.

The legislature of a country to which Part I has been so extended may modify or add to its provisions, in their operation as part of the law of that country⁶, as the legislature may consider necessary to adapt the provisions to the circumstances of that country as regards procedure and remedies⁷ or as regards works qualifying for copyright⁸ protection by virtue of a connection with that country⁹.

Where a country to which Part I has been extended ceases to be a colony of the United Kingdom¹⁰, then, as from the date on which it ceases to be a colony, it ceases to be regarded as a country to which Part I extends for the purposes¹¹ of denial of copyright protection to citizens of countries not giving adequate protection to British works¹² and Crown¹³ and Parliamentary¹⁴ copyright¹⁵; but it continues to be treated as a country to which Part I extends for the purposes of qualification for copyright protection¹⁶ until:

547 (1) an Order in Council is made¹⁷ in respect of that country¹⁸; or

548 (2) an Order in Council is made declaring that it is to cease to be so treated by reason of the fact that the provisions of Part I as part of the law of that country have been repealed or amended¹⁹.

1 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

2 The Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

3 Ibid s 157(2)(a).

4 Ibid s 157(2)(b).

5 Ibid s 157(2)(c). For the meaning of 'colony' see PARA 3 note 7 ante. That power includes power to extend, subject to such exceptions and modifications as may be specified in the order, any Order in Council made under s 158 (see the text and notes 10-19 infra), s 159 (see PARA 447 post), s 160 (see PARA 454 post), s 161 and s 162 (as amended) (see PARA 443 ante): s 157(3). Nothing in s 157 is to be construed as restricting the extent of s 170, Sch 1 para 36 (see PARA 445 post) in relation to the law of a dependent territory to which Pt I (as amended) does not extend: s 157(5). The Copyright (Bermuda) Order 2003, SI 2003/1517, and the Copyright (Gibraltar) Order 2005, SI 2005/853, have been made. As from such date as the Governor of Gibraltar may appoint by proclamation published in the Gazette of Gibraltar, the Copyright (Gibraltar) Order 2005, SI 2005/853, is revoked: see the Copyright (Gibraltar) Revocation Order 2006, SI 2006/1039, arts 1, 2. At the date at which this volume states the law no such date had been appointed.

6 For the meaning of 'country' see PARA 59 note 4 ante.

7 Copyright, Designs and Patents Act 1988 s 157(4)(a).

8 For the meaning of 'copyright' see PARA 57 ante.

9 Copyright, Designs and Patents Act 1988 s 157(4)(b).

10 Ibid s 158(1). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

11 le for the purposes of *ibid* s 160(2)(a): see *PARA* 454 *post*.

12 *Ibid* s 158(2)(a).

13 le for the purposes of *ibid* s 163: see *PARAS* 144, 146 *ante*.

14 le for the purposes of *ibid* s 165: see *PARAS* 150-151 *ante*.

15 *Ibid* s 158(2)(b).

16 le for the purposes of *ibid* ss 154-156 (as amended): see *PARAS* 60-62 *ante*.

17 le under *ibid* s 159: see *PARA* 447 *post*.

18 *Ibid* s 158(3)(a). At the date at which this volume states the law no such Order in Council had been made.

19 *Ibid* s 158(3)(b). A statutory instrument containing an Order in Council under s 158(3)(b) is subject to annulment in pursuance of a resolution of either House of Parliament: s 158(4). At the date at which this volume states the law no such Order in Council had been made.

UPDATE

444 Extension to areas within jurisdiction

NOTE 5--SI 2003/1517 revoked: SI 2009/2749.

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445. Dependent territories to which previous legislation extended.

The Copyright Act 1911 remains in force as part of the law of any dependent territory¹ in which it was in force immediately before 1 August 1989² until the copyright provisions of the Copyright, Designs and Patents Act 1988³ come into force in that territory by virtue of an Order in Council⁴ extending those provisions to that territory⁵ or, in the case of any of the Channel Islands, the Copyright Act 1911 is repealed⁶ by Order in Council⁷.

An Order in Council in force immediately before 1 August 1989 which extends to any dependent territory any provisions of the Copyright Act 1956 remains in force as part of the law of that territory until the copyright provisions of the Copyright, Designs and Patents Act 1988 come into force in that territory by virtue of an Order in Council⁸ extending those provisions to that territory⁹ or, in the case of the Isle of Man, the order is revoked¹⁰ by another Order in Council¹¹; and, while it remains in force, such an order may be varied under the provisions of the Copyright Act 1956 under which it was made¹².

A dependent territory in which the Copyright Act 1911 or the Copyright Act 1956 remains in force is to be treated, in the law of the countries to which Part I of the Copyright, Designs and Patents Act 1988 extends¹³, as a country¹⁴ to which that Part extends; and those countries are to be treated in the law of such a territory as countries to which the Copyright Act 1911 or, as the case may be, the Copyright Act 1956 extends¹⁵.

If a country in which the Copyright Act 1911 or the Copyright Act 1956 is in force ceases to be a colony of the United Kingdom¹⁶, the consequences of the country ceasing to be colony are the same¹⁷ as if the Copyright, Designs and Patents Act 1988 had been extended there¹⁸.

1 For these purposes, 'dependent territory' means any of the Channel Islands, the Isle of Man or any colony: Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 36(6). For the meaning of 'colony' see PARA 3 note 7 ante.

2 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

3 Ie *ibid* Pt I (ss 1-179) (as amended). For the meaning of 'copyright' see PARA 57 ante.

4 Ie an order under *ibid* s 157: see PARA 444 ante.

5 *Ibid* Sch 1 para 36(1)(a).

6 Ie repealed by an order under *ibid* Sch 1 para 36(3): see note 7 infra.

7 *Ibid* Sch 1 para 36(1)(b). If it appears to Her Majesty that provision with respect to copyright has been made in the law of any of the Channel Islands or the Isle of Man otherwise than by extending the provisions of Pt I (as amended), Her Majesty may by Order in Council repeal the Copyright Act 1911 as it has effect as part of the law of that territory or, as the case may be, revoke the order extending the Copyright Act 1956 there: Copyright, Designs and Patents Act 1988 Sch 1 para 36(3). The Copyright (Isle of Man) (Revocation) Order 1992, SI 1992/1306, has been made.

8 Ie an Order in Council under the Copyright, Designs and Patents Act 1988 s 157: see PARA 444 ante.

9 *Ibid* Sch 1 para 36(2)(a).

10 Ie revoked by an order under *ibid* Sch 1 para 36(3): see note 7 supra.

11 Ibid Sch 1 para 36(2)(b).

12 Ibid Sch 1 para 36(2). The effect of Sch 1 para 36(2) is to save the following statutory instruments made under the Copyright Act 1956 s 31 (repealed), which made provisions (corresponding to the Copyright, Designs and Patents Act 1988 s 157(2) (see PARA 444 ante)) under which the Copyright Act 1956 (repealed) could be extended, subject to specified exceptions and modifications, to the Isle of Man, the Channel Islands, any colony, any country outside Her Majesty's dominions in which Her Majesty has jurisdiction or any country consisting partly of one or more colonies and partly of one or more such countries outside Her Majesty's dominions. The Copyright Act 1956 (repealed) was subsequently extended to computer programs by the Copyright (Computer Software) Amendment Act 1985 (repealed), which was to be construed as one with the Copyright Act 1956 (repealed) and Pt V (ss 31-35) (repealed) applied in relation to the provisions of the Copyright (Computer Software) Amendment Act 1985 as it applied in relation to the provisions of the Copyright Act 1956: see the Copyright (Computer Software) Amendment Act 1985 s 4(2) (repealed). The statutory instruments saved are: the Copyright (Gibraltar) Order 1960, SI 1960/847 (amended by SI 1985/1986); the Copyright (Virgin Islands) Order 1962/2185 (amended by SI 1985/1988); the Copyright (Falkland Islands) Order 1963/1037; the Copyright (St Helena) Order 1963, SI 1963/1038; the Copyright (Montserrat) Order 1965, SI 1965/1858 (amended by SI 1985/1987); the Copyright (Cayman Islands) Order 1965, SI 1965/2010; the Copyright (Hong Kong) Order 1972, SI 1972/1724 (amended by SI 1979/910; SI 1990/588); the Copyright (British Indian Ocean Territory) Order 1984, SI 1984/541; and the Copyright (Computer Software) (Extension to Territories) Order 1987, SI 1987/2200. Hong Kong was formerly a colony but as from 1 July 1997 Her Majesty no longer has any sovereignty or jurisdiction over any part of Hong Kong: see the Hong Kong Act 1985 s 1; and COMMONWEALTH vol 13 (2009) PARA 727.

13 As to the countries to which the Copyright, Designs and Patents Act 1988 Pt I (as amended) extends see PARAS 443-444 ante.

14 For the meaning of 'country' see PARA 59 note 4 ante.

15 Copyright, Designs and Patents Act 1988 Sch 1 para 36(4).

16 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

17 Ie the Copyright, Designs and Patents Act 1988 s 158 (see PARA 444 ante) applies with the substitution for the reference in s 158(3)(b) to the provisions of Pt I (as amended) of a reference to the provisions of the Copyright Act 1911 or the Copyright Act 1956, as the case may be.

18 Copyright, Designs and Patents Act 1988 Sch 1 para 36(5).

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446. Other countries to which previous legislation extended.

Where, immediately before 1 August 1989¹, a country² was not a dependent territory³ but was a country to which the Copyright Act 1956 extended⁴ or was treated⁵ as such a country⁶, Her Majesty may by Order in Council conclusively declare for these purposes whether a country was such a country or was so treated⁷.

Any such country is to be treated as a country to which Part I of the Copyright, Designs and Patents Act 1988⁸ extends for the purposes of qualification for copyright protection⁹ until an Order in Council is made¹⁰ in respect of that country applying Part I to that country¹¹, or an Order in Council is made declaring that it is to cease to be so treated by reason of the fact that the provisions of the Copyright Act 1956 or, as the case may be, the Copyright Act 1911 which extended there as part of the law of that country have been repealed or amended¹².

A statutory instrument containing an Order in Council under these provisions is subject to annulment in pursuance of a resolution of either House of Parliament¹³.

1 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

2 For the meaning of 'country' see PARA 59 note 4 ante.

3 Ie within the meaning of the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 36(6): see PARA 445 note 1 ante.

4 Ibid Sch 1 para 37(1)(a).

5 Ie by virtue of the Copyright Act 1956 s 50(1), Sch 7 para 39(2) (repealed).

6 Copyright, Designs and Patents Act 1988 Sch 1 para 37(1)(b).

7 Ibid Sch 1 para 37(1). As to such countries see the Copyright (Status of Former Dependent Territories) Order 1990, SI 1990/1512, art 2, Sch 1.

8 Ie the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

9 Ie for the purposes of ibid ss 154-156 (as amended): see PARAS 60-62 ante.

10 Ie under ibid s 159: see PARA 447 post.

11 Ibid Sch 1 para 37(2)(a).

12 Ibid Sch 1 para 37(2)(b). As to such countries see the Copyright (Status of Former Dependent Territories) Order 1990, SI 1990/1512, art 3, Sch 2.

13 Copyright, Designs and Patents Act 1988 Sch 1 para 37(3).

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B. COUNTRIES TO WHICH COPYRIGHT PROVISIONS DO NOT EXTEND

447. Application to foreign countries.

Her Majesty may by Order in Council¹ make provision for applying in relation to a country² to which Part I of the Copyright, Designs and Patents Act 1988³ does not extend⁴ any of its provisions specified in the order, so as to secure that those provisions:

- 549 (1) apply in relation to persons who are citizens or subjects of that country or are domiciled⁵ or resident⁶ there, as they apply to persons who are British citizens⁷ or are domiciled or resident in the United Kingdom⁸; or
- 550 (2) apply in relation to bodies incorporated under the law of that country as they apply in relation to bodies incorporated under the law of a part of the United Kingdom⁹; or
- 551 (3) apply in relation to works first published¹⁰ in that country as they apply in relation to works first published in the United Kingdom¹¹; or
- 552 (4) apply in relation to broadcasts¹² made from that country as they apply in relation to broadcasts made from the United Kingdom¹³.

An Order in Council may make provision for all or any of the matters mentioned above and may apply any provisions of Part I of the Copyright, Designs and Patents Act 1988, subject to such exceptions and modifications as are specified in the order¹⁴, and direct that any provisions of Part I are to apply either generally or in relation to such classes of works, or other classes of case, as are specified in the order¹⁵.

Except in the case of a Convention country¹⁶ or another member state of the European Union, Her Majesty must not make an Order in Council under these provisions in relation to a country unless satisfied that provision has been or will be made under the law of that country, in respect of the class of works to which the order relates, giving adequate protection to the owners of copyright¹⁷ under Part I of the Copyright, Designs and Patents Act 1988¹⁸.

A statutory instrument containing an Order in Council under these provisions is subject to annulment in pursuance of a resolution of either House of Parliament¹⁹.

1 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

2 For the meaning of 'country' see PARA 59 note 4 ante.

3 Ie the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

4 As to the territorial extent of the Copyright, Designs and Patents Act 1988 see PARA 443 ante; and as to the extension of such provisions to dependent territories see PARA 444 ante.

5 As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq.

6 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

7 For the meaning of 'British citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

8 Copyright, Designs and Patents Act 1988 s 159(1)(a). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

9 Ibid s 159(1)(b).

10 For the meaning of 'published' see PARA 63 ante.

11 Copyright, Designs and Patents Act 1988 s 159(1)(c).

12 For the meaning of 'broadcast' see PARA 89 ante.

13 Copyright, Designs and Patents Act 1988 s 159(1)(d) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).

14 Copyright, Designs and Patents Act 1988 s 159(2)(a).

15 Ibid s 159(2)(b). The Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, has been made: see PARAS 448-451 post.

16 'Convention country' means a country which is a party to a Convention relating to copyright to which the United Kingdom is also a party: Copyright, Designs and Patents Act 1988 s 159(4). As to such Conventions see PARA 452 post.

17 As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

18 Copyright, Designs and Patents Act 1988 s 159(3).

19 Ibid s 159(5).

UPDATE

447-451 Countries to which Copyright Provisions do Not Extend

SI 2006/316 revoked: see now Copyright and Performances (Application to Other Countries) Order 2008, SI 2008/677 (amended by SI 2009/2745).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(12) INTERNATIONAL ASPECTS OF COPYRIGHT LAW/(i) Application of Legislation/B. COUNTRIES TO WHICH COPYRIGHT PROVISIONS DO NOT EXTEND/448. Literary, dramatic, musical and artistic works, films and the typographical arrangement of published editions.

448. Literary, dramatic, musical and artistic works, films and the typographical arrangement of published editions.

All the provisions of Part I of the Copyright, Designs and Patents Act 1988¹, in so far as they relate to literary², dramatic³, musical⁴ and artistic⁵ works, films⁶ and the typographical arrangement of published editions⁷, apply in relation to the specified countries⁸ so that those provisions apply:

- 553 (1) in relation to persons who are citizens or subjects of, or are domiciled⁹ or resident¹⁰ in, those countries as they apply to persons who are British citizens¹¹ or are domiciled or resident in the United Kingdom¹²;
- 554 (2) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of a part of the United Kingdom¹³; and
- 555 (3) in relation to works first published¹⁴ in those countries as they apply in relation to works first published in the United Kingdom¹⁵.

However, where a literary, dramatic, musical or artistic work was first published before 1 June 1957 it does not qualify for copyright protection by reason of the provisions¹⁶ relating to qualification by reference to author¹⁷.

1 Ie the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) (as amended).

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 For the meaning of 'film' see PARA 86 ante.

7 For the meaning of 'published edition' see PARA 92 ante.

8 Ie the countries indicated in the Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 2(1), Schedule, Table, second column.

9 As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq.

10 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

11 For the meaning of 'British citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

12 Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 2(1)(a). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

13 Ibid art 2(1)(b).

- 14 For the meaning of 'published' see PARA 63 ante.
- 15 Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 2(1)(c).
- 16 ie by reason of the Copyright, Designs and Patents Act 1988 s 154: see PARA 60 ante.
- 17 Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 2(2).

UPDATE

447-451 Countries to which Copyright Provisions do Not Extend

SI 2006/316 revoked: see now Copyright and Performances (Application to Other Countries) Order 2008, SI 2008/677 (amended by SI 2009/2745).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(12) INTERNATIONAL ASPECTS OF COPYRIGHT LAW/(i) Application of Legislation/B. COUNTRIES TO WHICH COPYRIGHT PROVISIONS DO NOT EXTEND/449. Sound recordings.

449. Sound recordings.

With the exception of certain provisions relating to infringement¹ and criminal liability², all the provisions of Part 1 of the Copyright, Designs and Patents Act 1988³, in so far as they relate to sound recordings⁴, apply in relation to the specified countries⁵ so that those provisions apply:

- 556 (1) in relation to persons who are citizens or subjects of, or are domiciled⁶ or resident⁷ in, those countries as they apply to persons who are British citizens⁸ or are domiciled or resident in the United Kingdom⁹;
- 557 (2) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of a part of the United Kingdom¹⁰; and
- 558 (3) in relation to works first published¹¹ in those countries as they apply in relation to works first published in the United Kingdom¹².

Certain of the excepted provisions do, however, apply in the case of some of the specified countries¹³.

1 Ie the Copyright, Designs and Patents Act 1988 s 18A (as added) (infringement by rental or lending of work to the public: see PARA 323 ante) in so far as it applies to lending; s 19 (as amended) (infringement by showing or playing of work in public: see PARA 324 ante); s 20 (as substituted) (infringement by communication to the public: see PARA 326 ante); and s 26 (secondary infringement; provision of apparatus for infringing performance, etc: see PARA 333 ante).

2 Ie *ibid* s 107(2A) (as added) and s 107(3) (criminal liability for communicating to the public or playing a sound recording): see PARA 437 ante.

3 Ie *ibid* Pt I (ss 1-179) (as amended).

4 For the meaning of 'sound recording' see PARA 84 ante.

5 Ie the countries indicated in the Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 3(1), Schedule, Table, third column.

6 As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq.

7 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

8 For the meaning of 'British citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

9 Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 3(1)(a), (2)(a). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

10 Ibid art 3(1)(b), (2)(a).

11 For the meaning of 'published' see PARA 63 ante.

12 Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 3(1)(c), (2)(a).

13 See *ibid* art 3(2)(b), Schedule, Table, third column.

UPDATE

447-451 Countries to which Copyright Provisions do Not Extend

SI 2006/316 revoked: see now Copyright and Performances (Application to Other Countries) Order 2008, SI 2008/677 (amended by SI 2009/2745).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(12) INTERNATIONAL ASPECTS OF COPYRIGHT LAW/(i) Application of Legislation/B. COUNTRIES TO WHICH COPYRIGHT PROVISIONS DO NOT EXTEND/450. Broadcasts.

450. Broadcasts.

With the exception, in relation to certain countries¹, of specified provisions relating to infringement² and criminal liability³, all the provisions of Part 1 of the Copyright, Designs and Patents Act 1988⁴, in so far as they relate to wireless broadcasts⁵, apply in relation to the specified countries⁶ so that those provisions apply:

- 559 (1) in relation to persons who are citizens or subjects of, or are domiciled⁷ or resident⁸ in, those countries as they apply to persons who are British citizens⁹ or are domiciled or resident in the United Kingdom¹⁰;
- 560 (2) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of a part of the United Kingdom¹¹; and
- 561 (3) in relation to broadcasts made from those countries as they apply in relation to broadcasts made from the United Kingdom¹².

However, the provisions of Part 1 do not apply in relation to a wireless broadcast made from a place in such a country before the relevant date¹³; and for the purposes of the duration of copyright in repeats¹⁴, any wireless broadcast which does not qualify for copyright protection must be disregarded¹⁵.

In the case of broadcasts¹⁶ other than wireless broadcasts, all the provisions of Part 1, in so far as they relate to such broadcasts, apply in relation to the specified countries¹⁷ so that those provisions apply:

- 562 (a) in relation to persons who are citizens or subjects of, or are domiciled or resident in, those countries as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom¹⁸;
- 563 (b) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of a part of the United Kingdom¹⁹; and
- 564 (c) in relation to broadcasts made from those countries as they apply in relation to broadcasts made from the United Kingdom²⁰.

1 See the Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 4(1), (2), Schedule, Table, fourth column.

2 I.e. the Copyright, Designs and Patents Act 1988 s 18A (as added) (infringement by rental or lending of work to the public: see PARA 323 ante); s 19 (as amended) (infringement by showing or playing of work in public: see PARA 324 ante), but only in so far as it relates to broadcasts other than television broadcasts; s 20 (as substituted) (infringement by communication to the public: see PARA 326 ante), except in relation to broadcasting by wireless telegraphy; and s 26 (secondary infringement; provision of apparatus for infringing performance, etc: see PARA 333 ante), but only in so far as it relates to broadcasts other than television broadcasts.

3 I.e. ibid s 107(2A) (as added) (criminal liability for communicating to the public: see PARA 437 ante), except in relation to broadcasting by wireless telegraphy.

4 I.e. ibid Pt I (ss 1-179) (as amended).

5 For the meaning of 'wireless broadcast' see PARA 88 note 8 ante.

6 le the countries indicated in the Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 4(1), Schedule, Table, fourth column.

7 As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq.

8 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

9 For the meaning of 'British citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

10 Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 4(1)(a). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

11 Ibid art 4(1)(b).

12 Ibid art 4(1)(c).

13 Ibid art 4(3). As to the relevant date in relation to each of the specified countries see art 4(4), Schedule, Table, fourth column.

14 le for the purposes of the Copyright, Designs and Patents Act 1988 s 14(5): see PARA 99 ante. For the meaning of 'copyright' see PARA 57 ante.

15 Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 4(5).

16 For the meaning of 'broadcast' see PARA 89 ante.

17 le the countries indicated in the Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 5, Schedule, Table, fifth column.

18 Ibid art 5(a).

19 Ibid art 5(b).

20 Ibid art 5(c).

UPDATE

447-451 Countries to which Copyright Provisions do Not Extend

SI 2006/316 revoked: see now Copyright and Performances (Application to Other Countries) Order 2008, SI 2008/677 (amended by SI 2009/2745).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(12) INTERNATIONAL ASPECTS OF COPYRIGHT LAW/(i) Application of Legislation/B. COUNTRIES TO WHICH COPYRIGHT PROVISIONS DO NOT EXTEND/451. Protection for exploitation of works subsequently brought into copyright.

451. Protection for exploitation of works subsequently brought into copyright.

One of the effects of the Copyright and Performances (Application to Other Countries) Order 2006¹ is that a 'foreign work' or broadcast not previously in copyright may be brought into copyright by virtue of being first published in or, in the case of a broadcast, being made from, a country which has, subsequent to the making of the work or broadcast, become a party to the relevant Convention². Accordingly, there are certain protective provisions for a person who had exploited the work or broadcast or made preparations to do so whilst it was in the public domain.

Thus where, at a time when an act neither infringed nor was restricted by the relevant rights³ in the work, a person, A, has incurred any expenditure or liability in connection with the act⁴ and he began in good faith to do the act⁵ or made in good faith effective and serious preparations to do the act⁶, and another person, B, acquires⁷ those relevant rights, A has the right to continue to do the act or to do the act, notwithstanding that the act infringes or is restricted by those relevant rights⁸. However, where B, or his exclusive licensee⁹, pays reasonable compensation to A this right no longer applies¹⁰. Where such an offer is made but A and B cannot agree on what compensation is reasonable, either person may refer the matter to arbitration¹¹.

1 Ie the Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316: see PARAS 448-450 ante.

2 See the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 5(2)(a). In the case of works, the relevant Conventions are the International Convention for the Protection of Literary and Artistic Works (Berne, 9 September 1886; 77 BFSP 22; Cm 1212) (see PARA 452 post) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (Marrakesh, 15 April 1994; OJ L336, 23.12.94, p 214) (see PARA 452 post). In the case of broadcasts, the relevant Conventions are the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 26 October 1961; TS 38 (1964); Cmnd 2425), the European Agreement on the Protection of Television Broadcasts (Cmnd 1163) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (Marrakesh, 15 April 1994; OJ L336, 23.12.94, p 214).

3 'Relevant rights' means copyright, moral rights (see PARA 455 et seq post), and rights in performances (see PARA 604 et seq post): Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 7(5). For the meaning of 'copyright' see PARA 57 ante.

4 Ibid art 7(1)(a).

5 Ibid art 7(1)(b)(i).

6 Ibid art 7(1)(b)(ii).

7 Ie pursuant to the Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316.

8 Ibid art 7(2).

9 'Exclusive licensee' is not defined in the Copyright, Designs and Patents Act 1988, but for the meaning of 'exclusive licence' see PARA 176 ante.

10 Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, art 7(3).

11 Ibid art 7(4).

UPDATE

447-451 Countries to which Copyright Provisions do Not Extend

SI 2006/316 revoked: see now Copyright and Performances (Application to Other Countries) Order 2008, SI 2008/677 (amended by SI 2009/2745).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/2. COPYRIGHT/(12) INTERNATIONAL ASPECTS OF COPYRIGHT LAW/(ii) International Obligations/452. International Conventions.

(ii) International Obligations

452. International Conventions.

The first Convention relating to copyright was the Convention of the International Union for the Protection of Literary and Artistic Works which was signed at Berne on 9 September 1886¹, and is known as 'the Berne Convention'. By it the states concluding it or acceding to it were constituted as a copyright union, known as the Berne Union. The basis of the Convention was that all member states should confer an agreed standard of protection, and that any work first published in a Convention country should enjoy international protection in all states of the union². This Convention was modified in 1896 by the Additional Act of Paris³ and in 1908 a revised Convention was concluded at Berlin⁴.

In 1928 the Convention was replaced with modifications and additions by the Rome Convention⁵, but this Convention provided that the instruments previously in force should continue to be applicable in regard to relations with countries which did not ratify the Rome Convention, and that the countries on whose behalf the Rome Convention was signed might retain the benefit of the reservations which they had previously formulated. In June 1948 the Rome Convention was further revised at Brussels and the revisions were embodied in a superseding Convention, known as 'the Brussels Copyright Convention'⁶. It was the Brussels Copyright Convention which resulted in the passing of the Copyright Act 1956. A further revision took place at Stockholm in 1967⁷, and contained provisions enabling developing countries to make reservations such that the protection afforded to works in those countries is less than that given in other member states⁸.

The government of the United Kingdom has been a party to or acceded to all the Conventions of the Berne Union except the Stockholm Convention, of which it has ratified only the administrative and final clauses. The Stockholm Convention was further revised by an International Convention held at Paris from July 1971 to January 1972⁹. The United Kingdom ratified the Paris text on 2 January 1990; and this is the relevant text for the interpretation of the Copyright, Designs and Patents Act 1988¹⁰.

In 1952 a Universal Copyright Convention was formulated at Geneva under the auspices of UNESCO. This was ratified by the United Kingdom on 27 June 1957. Its purpose was to provide mutual protection between the countries of the Berne Union and those of the Pan-American Union (of which the United States¹¹ is the principal)¹². The Convention was revised at Paris in 1971¹³ in order to include provisions to assist developing countries¹⁴ and the revision was ratified by the United Kingdom on 19 May 1972.

The United Kingdom was a signatory to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations made at Rome in 1961¹⁵ which resulted in the Performers Protection Act 1963¹⁶, and to the Convention for the Protection of Producers of Phonograms against unauthorised Duplication of their Phonograms made at Geneva in 1971¹⁷. Further, the United Kingdom has ratified¹⁸ the European Agreement on the Protection of Television Broadcasts¹⁹ made at Strasbourg in 1960 and the Protocol²⁰ to that Agreement made at Strasbourg in 1965, which made amendments to the Agreement in part because of the entering into force of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

The United Kingdom was also a signatory to the Convention establishing the World Intellectual Property Organisation made in Stockholm in 1968²¹, the Convention for the Protection of Industrial Property made in Paris in 1883 and subsequently revised at Stockholm in 1967²², and the Agreement on Trade-Related Aspects of Intellectual Property Rights made in Marrakesh in 1994²³.

These Conventions are not part of the municipal law of this country²⁴, but they may be of assistance in arriving at the proper construction of the legislation founded upon their provisions²⁵.

1 I.e. the International Convention for the Protection of Literary and Artistic Works (Berne, 9 September 1886; 77 BFSP 22; Cm 1212). The Convention as originally made is set out in the Order in Council, dated 24 June 1912, regulating Copyright Relations with the Foreign Countries of the Berne Copyright Union, SR & O 1912/913, Sch 2 (revoked).

2 Report of the Copyright Committee 1951 (Cmd 8662), Preliminary.

3 The Additional Act (Paris, 4 May 1896; TS 14 (1896); C 8681) is set out in the Order in Council, dated 24 June 1912, regulating Copyright Relations with the Foreign Countries of the Berne Copyright Union 1912, SR & O 1912/913, Sch 3 (revoked).

4 The Berlin Convention (Berlin, 13 November 1908; TS 19 (1912); Cd 6324) is set out in the Order in Council, dated 24 June 1912, regulating Copyright Relations with the Foreign Countries of the Berne Copyright Union, SR & O 1912/913, Sch 1 (revoked). A further Protocol (Berne, 20 March 1914; TS 11 (1914); Cd 7613) was completed in 1914.

5 I.e. the Rome Convention (Rome, 2 June 1928; TS 12 (1932); Cmd 4057).

6 I.e. the International Convention revising the Berne Convention for the Protection of Literary and Artistic Works (Brussels, 2 June 1948; TS 4 (1948); Cmd 361).

7 I.e. the International Convention further revising the Berne Convention for the Protection of Literary and Artistic Works (Stockholm, 14 July 1967; TS 53 (1970); Cmnd 4412).

8 International Convention further revising the Berne Convention for the Protection of Literary and Artistic Works: Protocol on Developing Countries (Stockholm, 14 July 1967; TS 53 (1970); Cmnd 4412).

9 I.e. the International Convention further revising the Berne Convention for the Protection of Literary and Artistic Works (Paris, 24 July 1971; Cmnd 5002).

10 See 493 HL Official Report (5th series) col 1151.

11 Since that date the United States of America has acceded to the Berne Convention.

12 I.e. the Universal Copyright Convention (Geneva, 6 September 1952; Cmnd 289). Under this Convention, the term of protection to be secured is not less than 25 years. Published works of nationals of contracting states and works first published in those states enjoy in each contracting state the same protection as the other states accord to work of their nationals first published in their own territory. Unpublished works of nationals of each contracting state are to have the same protection in each other contracting state as the other contracting state accords to unpublished works of its own nationals. The symbol ©, accompanied by the name of the copyright proprietor and the year of first publication, is taken by a contracting state to indicate that the necessary formalities for copyright protection under the domestic law of that contracting state have been complied with, where the work in question was first published outside the territory of the first-named state and where the author of the work was not one of that state's nationals.

13 I.e. the International Convention revising the Universal Copyright Convention (Paris, 24 July 1971; TS 9 (1975); Cmnd 5844).

14 I.e. a country recognised as a developing country in accordance with *ibid* art V (bis).

15 I.e. the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 26 October 1961; TS 38 (1964); Cmnd 2425). The Convention was ratified by the United Kingdom on 30 October 1963.

16 Ie the Performers Protection Act 1963 (repealed): see now the Copyright, Designs and Patents Act 1988 Pt II (ss 180-212) (as amended); and PARA 604 et seq post.

17 Ie the Convention for the Protection of Producers of Phonograms against unauthorised Duplication of their Phonograms (Geneva, 29 October 1971; TS 41 (1973); Cmnd 5275). The Convention was ratified by the United Kingdom on 5 December 1971 and entered into force on 18 April 1973. The symbol P inside a circle accompanied by the date of the year of first publication of a phonogram placed on the phonogram or its container is taken by a contracting state to indicate that the necessary formalities for copyright protection under the domestic law of that contracting state have been complied with. A 'phonogram' for the purposes of the Convention means any exclusively aural fixation of sounds of a performance or of other sounds. As to protection of copyright in sound recordings see PARA 83 ante.

18 Ie on 9 March 1961.

19 Ie the European Agreement on the Protection of Television Broadcasts (Strasbourg, 22 June 1960; TS 87 (1961); Cmnd 1508).

20 Ie the Protocol to the European Agreement on the Protection of Television Broadcasts (Strasbourg, 22 January 1965; TS 69 (1965); Cmnd 2744).

21 Ie the Convention establishing the World Intellectual Property Organisation (WIPO) (Stockholm, 14 July 1967 to 13 January 1968; TS 52 (1970); Cmnd 4408). The Convention was ratified by the United Kingdom on 26 February 1969.

22 Ie the International Convention further revising the Paris Convention for the Protection of Industrial Property of 20 March 1883 (Stockholm, 14 July 1967 to 13 January 1968; TS 61 (1970); Cmnd 4431). The Stockholm text was ratified by the United Kingdom on 26 February 1969.

23 Ie the Agreement on Trade-Related Aspects of Intellectual Property Rights (OJ L336, 23.12.94, p 214). This Agreement comprises Annex 1C to the Agreement Establishing the World Trade Organisation (Cm 2556-2559; Cm 2561-2569; Cm 2571-2574). It was ratified by the United Kingdom on 15 September 1994 and entered into force on 1 January 1996.

24 Note that the Agreement on Trade-Related Aspects of Intellectual Property Rights is not directly applicable under European law: see *Azrak-Hamway International Inc's Licence of Right (Design Right and Copyright) Application* [1997] RPC 134; *Lenzing AG's European Patent (UK)* [1997] RPC 245.

25 *Warwick Film Productions Ltd v Eisinger* [1969] 1 Ch 508, [1967] 3 All ER 367; *Hogg v Toye & Co Ltd* [1935] Ch 497, CA; *Confetti Records (a firm) v Warner Music UK Ltd (t/a East West Records)* [2003] EWHC 1274 (Ch), [2003] EMLR 790, [2003] All ER (D) 61 (Jun). See generally INTERNATIONAL RELATIONS LAW.

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453. European legislation.

A number of EC Parliament and Council Directives have been made relating to copyright and related rights, most of which have been implemented in the United Kingdom by secondary legislation amending the Copyright, Designs and Patents Act 1988¹. They include:

- 565 (1) EC Council Directive of 14 May 1991² on the legal protection of computer programs;
- 566 (2) EC Council Directive of 19 November 1992³ on rental and lending right and on certain rights relating to copyright in the field of intellectual property;
- 567 (3) EC Council Directive of 27 September 1993⁴ on the co-ordination of certain rules and rights related to copyright applicable to satellite broadcasting and cable transmission;
- 568 (4) EC Council Directive of 29 October 1993⁵ harmonising the term of protection of copyright and certain related rights;
- 569 (5) EC Council Directive of 11 March 1996⁶ on the legal protection of databases;
- 570 (6) EC Parliament and Council Directive of 22 May 2001⁷ on the harmonisation of certain aspects of copyright and related rights in the information society;
- 571 (7) EC Parliament and Council Directive of 27 September 2001⁸ on the resale right for the benefit of the author of an original work of art;
- 572 (8) EC Parliament and Council Directive of 29 April 2004⁹ on the enforcement of intellectual property rights.

1 In many cases the wording of the secondary legislation departs to some extent from that of the relevant European Directive and it remains an open question whether such departure means that the secondary legislation is to that extent ultra vires.

2 Ie EC Council Directive 91/250 (OJ L122, 17.5.91, p 42), implemented by the Copyright (Computer Program) Regulations 1992, SI 1992/3233.

3 Ie EC Council Directive 92/100 (OJ L346, 27.11.92, p 61), implemented by the Copyright and Related Rights Regulations 1996, SI 1996/2967 (as amended).

4 Ie EC Council Directive 93/83 (OJ L248, 6.10.93, p 15), implemented by the Copyright and Related Rights Regulations 1996, SI 1996/2967 (as amended).

5 Ie EC Council Directive 93/98 (OJ L290, 24.11.93, p 9), implemented by the Duration of Copyright and Rights in Performance Regulations 1995, SI 1995/3297 (as amended), and the Copyright and Related Rights Regulations 1996, SI 1996/2967 (as amended).

6 Ie EC Council Directive 96/9 (OJ L77, 27.3.96, p 20), implemented by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032 (as amended).

7 Ie EC Parliament and Council Directive 2001/29 (OJ L167, 22.6.2001, p 10), implemented by the Copyright and Related Rights Regulations 2003, SI 2003/2498.

8 Ie EC Parliament and Council Directive 2001/84 (OJ L272, 13.10.2001, p 32), implemented by the Artist's Resale Right Regulations 2006, SI 2006/346.

9 Ie EC Parliament and Council Directive 2004/48 (OJ L157, 30.04.2004, p 45), implemented by the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028.

UPDATE

453 European legislation

NOTE 2--Directive 91/250 replaced: European Parliament and EC Council Directive 2009/24 (OJ 111, 5.5.2009, p 16).

NOTE 5--Directive 93/98 replaced: European Parliament and EC Council Directive 2006/116 (OJ L372, 27.12.2006, p 12).

TEXT AND NOTE 6--As to the application of Directive 96/9 to the extraction of the contents of a database of legal information see Case C-545/07 *Apis-Hristovich EOOD v Lakorda AD* [2009] 3 CMLR 82, [2009] IP & T 689, ECJ.

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454. Inadequate protection in foreign countries.

If it appears to Her Majesty that the law of a country¹ fails to give adequate protection to British works², or to one or more classes of such works, Her Majesty may make provision by Order in Council restricting the rights conferred by Part I of the Copyright, Designs and Patents Act 1988³ in relation to works of authors connected with that country⁴. Such an order must designate the country concerned and provide that, for the purposes specified in the order, works first published⁵ after a date specified in the order must not be treated as qualifying for copyright⁶ protection by virtue of such publication if at that time the authors are:

- 573 (1) citizens or subjects of that country, not domiciled⁷ or resident⁸ in the United Kingdom⁹ or another country to which the relevant provisions¹⁰ extend¹¹; or
- 574 (2) bodies incorporated under the law of that country¹²,

and the order may make such provision for all the relevant purposes¹³ or for such purposes as are specified in the order, and either generally or in relation to such class of cases as are specified in the order, having regard to the nature and extent of that failure¹⁴.

A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament¹⁵.

1 For the meaning of 'country' see PARA 59 note 4 ante.

2 'British works' means works the author of which was a qualifying person at the material time within the meaning of the Copyright, Designs and Patents Act 1988 s 154 (see PARA 60 et seq ante); and s 160 applies to literary, dramatic, musical and artistic works, sound recordings and films: s 160(3). For the meaning of 'author' see PARA 110 ante; for the meaning of 'literary work' see PARA 67 ante; for the meanings of 'dramatic work' and 'musical work' see PARA 73 ante; for the meaning of 'artistic work' see PARA 75 ante; for the meaning of 'sound recording' see PARA 84 ante; and for the meaning of 'film' see PARA 86 ante.

3 *Ibid* Pt I (ss 1-179) (as amended).

4 *Ibid* s 160(1). At the date at which this volume states the law no such Order in Council had been made. As to Orders in Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

5 For the meaning of 'published' see PARA 63 ante.

6 For the meaning of 'copyright' see PARA 57 ante.

7 As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq.

8 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

9 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

10 *Ie* the relevant provisions of the Copyright, Designs and Patents Act 1988 Pt I (as amended).

11 *Ibid* s 160(2)(a).

12 *Ibid* s 160(2)(b).

13 *Ie* for the purposes of *ibid* Pt I (as amended).

14 Ibid s 160(2).

15 Ibid s 160(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(1) IN GENERAL/455. In general.

3. MORAL RIGHTS

(1) IN GENERAL

455. In general.

The Copyright, Designs and Patents Act 1988¹ conferred a number of new rights which, together with the already existing 'false attribution right'², are known collectively as 'moral rights'³. The moral rights are:

- 35 (1) the right to be identified as the author of a work or the director of a film, as
the case may be (the 'right of paternity')⁴;
- 36 (2) the right to object to derogatory treatment of a work or film (the 'right of
integrity')⁵;
- 37 (3) the right not to have a work or film falsely attributed to an author or director,
as the case may be⁶;
- 38 (4) the right to privacy of certain photographs and films⁷.

No act done before 1 August 1989⁸ is actionable as a breach of the moral rights⁹; and the provisions relating to moral rights are subject to modifications in relation to works made before that date¹⁰.

The provisions relating to moral rights do not apply to publication right¹¹.

1 I.e. the Copyright, Designs and Patents Act 1988 Pt I Ch IV (ss 77-89) (as amended) (see PARA 456 et seq post), s 94 (see PARA 483 post), s 95 (see PARA 484 post), s 103 (see PARAS 458, 466, 472, 476 post), s 104 (see PARA 431 ante) and s 105 (as amended) (see PARA 432 ante).

2 I.e. the right of a person not to have a work or film, as the case may be, falsely attributed to him: see PARA 471 post. Prior to the enactment of the Copyright, Designs and Patents Act 1988 this right was conferred by the Copyright Act 1956 s 43 (repealed).

3 As to moral rights in relation to performers see PARA 722 et seq post.

4 See the Copyright, Designs and Patents Act 1988 s 77 (as amended); and PARA 456 post.

5 See ibid s 80; and PARA 463 post.

6 See ibid s 84(1); and PARA 471 post.

7 See ibid s 85 (as amended); and PARA 476 post.

8 I.e. the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

9 Ibid s 170, Sch 1 para 22(1). The Copyright Act 1956 s 43 (repealed) (false attribution right) continued to apply in relation to acts done before 1 August 1989: Copyright, Designs and Patents Act 1988 Sch 1 para 22(2). Such acts were thus actionable up to and including 31 July 1995, when the limitation period for bringing such actions expired: see the Limitation Act 1980 s 2; and LIMITATION PERIODS vol 68 (2008) PARA 979.

10 See the Copyright, Designs and Patents Act 1988 Sch 1 paras 23, 24; and PARAS 457, 465, 477 post.

- 11 See the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(1); and PARA 500 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(2) RIGHT TO BE IDENTIFIED AS AUTHOR OR DIRECTOR/456. Right to be identified as author or director.

(2) RIGHT TO BE IDENTIFIED AS AUTHOR OR DIRECTOR

456. Right to be identified as author or director.

Subject to certain exceptions¹, the author² of a copyright³ literary⁴, dramatic⁵, musical⁶ or artistic⁷ work who was alive on 1 August 1989⁸, and the director of a copyright film⁹ made on or after that date, has the right to be identified as the author¹⁰ or director of the work in the following circumstances¹¹; but the right is not infringed unless it has been¹² asserted¹³.

The author of a literary work, other than words intended to be sung or spoken with music, or a dramatic work has the right to be identified whenever:

- 39 (1) the work is published commercially¹⁴, performed¹⁵ in public or communicated to the public¹⁶; or
- 40 (2) copies¹⁷ of a film or sound recording¹⁸ including the work are issued to the public¹⁹,

and that right includes the right to be identified whenever any of those events occur in relation to an adaptation²⁰ of the work as the author of the work from which the adaptation was made²¹.

The author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified whenever:

- 41 (a) the work is published commercially²²;
- 42 (b) copies of a sound recording of the work are issued to the public²³; or
- 43 (c) a film of which the soundtrack includes the work is shown in public²⁴ or copies of such a film are issued to the public²⁵,

and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made²⁶.

The author of an artistic work has the right to be identified whenever:

- 44 (i) the work is published commercially or exhibited in public²⁷, or a visual image of it is communicated to the public²⁸;
- 45 (ii) a film including a visual image of the work is shown in public or copies of such a film are issued to the public²⁹; or
- 46 (iii) in the case of a work of architecture³⁰ in the form of a building³¹ or a model for a building, a sculpture³² or a work of artistic craftsmanship³³, copies of a graphic work³⁴ representing it, or of a photograph³⁵ of it, are issued to the public³⁶.

The author of a work of architecture in the form of a building also has the right to be identified on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed³⁷.

The director of a film has the right to be identified whenever the film is shown in public or communicated to the public or copies of the film are issued to the public³⁸.

The right applies in relation to the whole or any substantial part of a work³⁹. The right of the author or director under these provisions is:

- 47 (A) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy⁴⁰;
- 48 (B) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building⁴¹; and
- 49 (C) in any other case, to be identified in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, showing or communication to the public in question⁴²,

and the identification must in each case be clear and reasonably prominent⁴³.

1 le subject to the Copyright, Designs and Patents Act 1988 s 79: see PARA 461 post. As to the further exceptions in relation to works made before 1 August 1989 see PARA 457 post.

2 For the meaning of 'author' see PARA 110 ante.

3 For the meaning of 'copyright work' see PARA 57 ante.

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'dramatic work' see PARA 73 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 For the meaning of 'artistic work' see PARA 75 ante.

8 le the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

9 For the meaning of 'film' see PARA 86 ante.

10 The Copyright, Designs and Patents Act 1988 s 77 (as amended) is concerned with the authorship of the literary work, not with crediting the source of ideas embodied in that literary work: *Anya v Wu* [2004] All ER (D) 413 (Feb).

11 As to exceptions to the right see PARA 461 post. As to the application of the right to joint authors see PARA 462 post.

12 le in accordance with the Copyright, Designs and Patents Act 1988 s 78: see PARAS 458-459 post.

13 Ibid ss 77(1), (9), 170, Sch 1 para 23(1)(a), (2).

14 For the meaning of 'published commercially' see PARA 63 ante.

15 For the meaning of 'perform' see PARA 324 ante.

16 Copyright, Designs and Patents Act 1988 s 77(2)(a) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 8(1)(a)). For the meaning of 'communication to the public' see PARA 326 ante.

17 For the meaning of 'copies' see PARA 314 ante.

18 For the meaning of 'sound recording' see PARA 84 ante.

19 Copyright, Designs and Patents Act 1988 s 77(2)(b). As to references to the issue to the public of copies of a work see PARA 322 ante.

20 For the meaning of 'adaptation' see PARA 327 ante.

21 Copyright, Designs and Patents Act 1988 s 77(2).

- 22 Ibid s 77(3)(a).
- 23 Ibid s 77(3)(b).
- 24 As to the meaning of 'show in public' see PARAS 324-325 ante.
- 25 Copyright, Designs and Patents Act 1988 s 77(3)(c).
- 26 Ibid s 77(3).
- 27 As to the meaning of 'exhibit in public' see PARA 330 note 10 ante.
- 28 Copyright, Designs and Patents Act 1988 s 77(4)(a) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 8(2)(a)).
- 29 Copyright, Designs and Patents Act 1988 s 77(4)(b).
- 30 For the meaning of 'work of architecture' see PARA 79 ante.
- 31 For the meaning of 'building' see PARA 79 ante.
- 32 For the meaning of 'sculpture' see PARA 78 ante.
- 33 For the meaning of 'work of artistic craftsmanship' see PARA 80 ante.
- 34 For the meaning of 'graphic work' see PARA 76 ante.
- 35 For the meaning of 'photograph' see PARA 77 ante.
- 36 Copyright, Designs and Patents Act 1988 s 77(4)(c).
- 37 Ibid s 77(5).
- 38 Ibid s 77(6) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 8(1)(b)).
- 39 Copyright, Designs and Patents Act 1988 s 89(1). As to the meaning of 'substantial part' in relation to copyright see PARA 321 ante.
- 40 Ibid s 77(7)(a).
- 41 Ibid s 77(7)(b).
- 42 Ibid s 77(7)(c) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 9(1)(b)).
- 43 Copyright, Designs and Patents Act 1988 s 77(7).

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457. Works made before 1 August 1989.

The right¹ to be identified as the author² of a work or director of a film³ does not apply:

- 50 (1) in relation to a literary⁴, dramatic⁵, musical⁶ or artistic⁷ work of which the author⁸ died before 1 August 1989⁹ or in relation to a film made before that date¹⁰;
- 51 (2) in relation to a literary, dramatic, musical or artistic work made before 1 August 1989¹¹: (a) where copyright first vested¹² in the author, to anything which, by virtue of an assignment¹³ of copyright made or licence¹⁴ granted before 1 August 1989, may be done without infringing copyright¹⁵; or (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner¹⁶;
- 52 (3) to anything done in relation to a record made in pursuance to a statutory recording licence¹⁷ under the Copyright Act 1956¹⁸.

1 ie the right conferred by the Copyright, Designs and Patents Act 1988 s 77 (as amended): see PARA 456 ante.

2 For the meaning of 'author' see PARA 110 ante.

3 For the meaning of 'film' see PARA 86 ante.

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'dramatic work' see PARA 73 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 For the meaning of 'artistic work' see PARA 75 ante.

8 For the purposes of moral rights (ie the rights conferred by the Copyright, Designs and Patents Act 1988 Pt I Ch IV (ss 77-89) (as amended)), the question who was the author of a work made before 1 August 1989 is to be determined in accordance with the Copyright, Designs and Patents Act 1988 ss 9, 10 (see PARAS 110, 113 ante): s 170, Sch 1 para 10.

9 ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

10 Ibid Sch 1 para 23(1)(a), (2).

11 For these purposes, a work the making of which extended over a period is to be taken to have been made when its making was completed: ibid Sch 1 para 1(3).

12 For the meaning of 'copyright' see PARA 57 ante. As to the vesting of copyright see PARA 118 et seq ante.

13 As to assignment of copyright see PARA 160 et seq ante.

14 As to licences of copyright see PARA 175 et seq ante.

15 Copyright, Designs and Patents Act 1988 Sch 1 para 23(1), (3)(a). As to infringement of copyright see PARA 311 et seq ante.

16 Ibid Sch 1 para 23(1), (3)(b). For the meaning of references to the licence of the copyright owner see PARAS 121, 175 notes 4, 6 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.

17 ie in pursuance of the Copyright Act 1956 s 8 (repealed).

18 Copyright, Designs and Patents Act 1988 Sch 1 para 23(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(2) RIGHT TO BE IDENTIFIED AS AUTHOR OR DIRECTOR/458. Requirement that right be asserted.

458. Requirement that right be asserted.

A person does not infringe the right¹ to be identified as the author² of a work or director of a film by doing any of the specified acts³ unless the right has been asserted⁴ so as to bind him in relation to that act⁵. If the author or director, in asserting his right to be identified, specifies a pseudonym, initials or some other particular form of identification, that form must be used; otherwise any reasonable form of identification may be used⁶.

Infringement is actionable as a breach of statutory duty owed to the person entitled to the right⁷. In a claim for infringement⁸ of the right to be identified as author or director the court must, in considering remedies, take into account any delay in asserting the right⁹.

1 Ie the right conferred by the Copyright, Designs and Patents Act 1988 s 77 (as amended): see PARA 456 ante.

2 For the meaning of 'author' see PARA 110 ante.

3 Ie any of the acts mentioned in the Copyright, Designs and Patents Act 1988 s 77 (as amended).

4 Ie in accordance with *ibid* s 78(2), (3): see PARA 459 post.

5 *Ibid* s 78(1). As to who is bound by the assertion see PARA 460 post.

6 *Ibid* s 77(8). The form of identification must be sufficient to identify the author's authorship: *Sawkins v Hyperion Records Ltd* [2004] EWHC 1530 (Ch), [2004] 4 All ER 418, [2005] IP & T 60; *affd* [2005] EWCA Civ 565, [2005] 3 All ER 636, [2005] IP & T 923.

7 Copyright, Designs and Patents Act 1988 s 103(1). In such a claim the statutory presumptions contained in ss 104, 105 (as amended) apply: see PARAS 431-432 ante. As to breach of statutory duty see TORT vol 97 (2010) PARA 495 et seq.

8 As to claims for infringement, and as to the remedies available, see PARA 410 et seq ante.

9 Copyright, Designs and Patents Act 1988 s 78(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(2) RIGHT TO BE IDENTIFIED AS AUTHOR OR DIRECTOR/459. Manner of asserting the right.

459. Manner of asserting the right.

The right to be identified as the author of a work or director of a film¹ may be asserted generally, or in relation to any specified act² or description of acts:

- 53 (1) on an assignment³ of copyright in the work, by including in the instrument effecting the assignment a statement that the author⁴ or director asserts, in relation to that work, his right to be identified⁵; or
- 54 (2) by instrument in writing⁶ signed⁷ by the author or director⁸.

The right may also be asserted, in relation to the public exhibition⁹ of an artistic work¹⁰:

- 55 (a) by securing that, when the author or other first owner of copyright¹¹ parts with possession of the original, or of a copy¹² made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached¹³; or
- 56 (b) by including in a licence¹⁴ by which the author or other first owner of copyright authorises the making of copies of the work a statement signed¹⁵ by or on behalf of the person granting the licence that the author asserts his right to be identified in the event of the public exhibition of a copy made in pursuance of the licence¹⁶.

1 The right conferred by the Copyright, Designs and Patents Act 1988 s 77 (as amended): see PARA 456 ante.

2 The act specified in ibid s 77(2)-(7) (as amended): see PARA 456 ante.

3 As to assignment of copyright see PARA 160 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

4 For the meaning of 'author' see PARA 110 ante.

5 Copyright, Designs and Patents Act 1988 s 78(2)(a). See *Christoffer v Poseidon Film Distributors Ltd* [1999] IP & T 118, [1999] All ER (D) 1063.

6 For the meaning of 'writing' see PARA 66 note 5 ante.

7 The requirement in this case that an instrument be signed by a person is satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal: Copyright, Designs and Patents Act 1988 s 176(2). As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

8 Copyright, Designs and Patents Act 1988 s 78(2)(b). See *Sawkins v Hyperion Records Ltd* [2005] EWCA Civ 565, [2005] 3 All ER 636, [2005] IP & T 923; *Beckingham v Hodgens* [2002] EWHC 2143 (Ch), [2002] All ER (D) 24 (Jul) (affd *Beckingham v Hodgens* [2003] EWCA Civ 143, [2003] IP & T 1115, [2003] EMLR 376).

9 As to the meaning of 'exhibit in public' see PARA 330 note 10 ante.

10 For the meaning of 'artistic work' see PARA 75 ante.

11 As to first ownership of copyright see PARA 118 et seq ante.

12 For the meaning of 'copy' see PARA 314 ante.

13 Copyright, Designs and Patents Act 1988 s 78(3)(a).

14 As to licences of copyright see PARA 175 et seq ante.

15 The requirement in this case that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal: Copyright, Designs and Patents Act 1988 s 176(1). See also note 7 supra.

16 Ibid s 78(3)(b).

UPDATE

459 Manner of asserting the right

NOTE 7--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1): see COMPANIES vol 14 (2009) PARA 283.

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460. Persons bound by the assertion of the right.

The persons bound by an assertion of the right to be identified as the author of a work or director of a film¹ are:

- 57 (1) in the case of an assertion made on an assignment of copyright in a work²,
the assignee and anyone claiming through him, whether or not he has notice of the
assertion³;
- 58 (2) in the case of an assertion made by a signed instrument in writing⁴, anyone
to whose notice the assertion is brought⁵;
- 59 (3) in the case of an assertion made on the original or copy⁶ of an artistic work⁷
or on a frame, mount or other thing to which it is attached⁸, anyone into whose
hands that original or copy comes, whether or not the identification is still present
or visible⁹;
- 60 (4) in the case of an assertion made in a licence authorising the making of
copies¹⁰, the licensee and anyone into whose hands a copy made in pursuance of
the licence comes, whether or not he has notice of the assertion¹¹.

1 le the right conferred by the Copyright, Designs and Patents Act 1988 s 77 (as amended): see PARA 456 ante.

2 le an assertion under *ibid* s 78(2)(a): see PARA 459 ante. As to assignment of copyright see PARA 160 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

3 *Ibid* s 78(4)(a).

4 le an assertion under *ibid* s 78(2)(b): see PARA 459 ante.

5 *Ibid* s 78(4)(b).

6 For the meaning of 'copy' see PARA 314 ante.

7 For the meaning of 'artistic work' see PARA 75 ante.

8 le an assertion under the Copyright, Designs and Patents Act 1988 s 78(3)(a): see PARA 459 ante.

9 *Ibid* s 78(4)(c).

10 le an assertion under *ibid* s 78(3)(b): see PARA 459 ante. As to licences of copyright see PARA 175 et seq ante.

11 *Ibid* s 78(4)(d).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(2) RIGHT TO BE IDENTIFIED AS AUTHOR OR DIRECTOR/461. Exceptions to right.

461. Exceptions to right.

The right to be identified as the author¹ of a work or director of a film² is subject to the following exceptions³.

The right does not apply in relation to the following descriptions of work: (1) a computer program⁴; (2) the design of a typeface⁵; (3) any computer-generated⁶ work⁷. The right apply to anything done by or with the authority of the copyright owner⁸ where copyright in the work originally vested⁹ in the author's or director's employer¹⁰. The right does not apply in relation to:

- 61 (a) any work made for the purpose of reporting current events¹¹;
- 62 (b) the publication¹² in a newspaper, magazine or similar periodical¹³, or in an encyclopaedia, dictionary, yearbook or other collective work of reference¹⁴, of a literary¹⁵, dramatic¹⁶, musical¹⁷ or artistic¹⁸ work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication¹⁹;
- 63 (c) a work in which Crown copyright²⁰ or Parliamentary copyright²¹ subsists²², or a work in which copyright originally vested²³ in an international organisation²⁴, unless the author or director has previously been identified as such in or on published copies²⁵ of the work²⁶.

The right is not infringed by an act which, by virtue of any of the following provisions, would not infringe copyright in the work:

- 64 (i) the provisions²⁷ relating to fair dealing for certain purposes, so far as they relate to the reporting of current events by means of a sound recording²⁸, film or broadcast²⁹;
- 65 (ii) the provisions³⁰ relating to incidental inclusion of work in an artistic work, sound recording, film or broadcast³¹;
- 66 (iii) the provisions³² relating to examination questions³³;
- 67 (iv) the provisions³⁴ relating to Parliamentary and judicial proceedings³⁵;
- 68 (v) the provisions³⁶ relating to Royal Commissions and statutory inquiries³⁷;
- 69 (vi) the provisions³⁸ relating to the use of design documents and models³⁹;
- 70 (vii) the provisions⁴⁰ relating to the effect of exploitation of designs derived from artistic works⁴¹;
- 71 (viii) the provisions⁴² relating to acts permitted when expiry of copyright etc is assumed⁴³.

Nor is the right infringed by the doing after 1 January 1996⁴⁴ of anything in pursuance of arrangements made before that date for the exploitation of the soundtrack of a film⁴⁵.

1 For the meaning of 'author' see PARA 110 ante.

2 Ie the right conferred by the Copyright, Designs and Patents Act 1988 s 77 (as amended): see PARA 456 ante. For the meaning of 'film' see PARA 86 ante.

3 Ibid s 79(1).

- 4 Ibid s 79(2)(a). As to the copyright in computer programs see PARA 72 ante.
- 5 Ibid s 79(2)(b). For the meaning of 'typeface' see PARA 381 note 3 ante. As to the copyright in typefaces see PARA 381 ante.
- 6 For the meaning of 'computer-generated' see PARA 96 note 18 ante.
- 7 Copyright, Designs and Patents Act 1988 s 79(2)(c).
- 8 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of the copyright in a work see PARA 118 et seq ante.
- 9 Ie by virtue of the Copyright, Designs and Patents Act 1988 s 11(2) (works produced in the course of employment): see PARA 118 ante.
- 10 Ibid s 79(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 18(1)).
- 11 Copyright, Designs and Patents Act 1988 s 79(5). As to reporting current events see PARA 339 ante.
- 12 For the meaning of 'publication' see PARA 63 ante.
- 13 Copyright, Designs and Patents Act 1988 s 79(6)(a).
- 14 Ibid s 79(6)(b).
- 15 For the meaning of 'literary work' see PARA 67 ante.
- 16 For the meaning of 'dramatic work' see PARA 73 ante.
- 17 For the meaning of 'musical work' see PARA 73 ante.
- 18 For the meaning of 'artistic work' see PARA 75 ante.
- 19 Copyright, Designs and Patents Act 1988 s 79(6).
- 20 For the meaning of 'Crown copyright' see PARA 144 ante.
- 21 For the meaning of 'Parliamentary copyright' see PARA 150 ante.
- 22 Copyright, Designs and Patents Act 1988 s 79(7)(a).
- 23 Ie by virtue of ibid s 168: see PARA 155 ante.
- 24 Ibid s 79(7)(b). For the meaning of 'international organisation' see PARA 155 note 8 ante.
- 25 For the meaning of 'copies' see PARA 314 ante.
- 26 Copyright, Designs and Patents Act 1988 s 79(7).
- 27 Ie ibid s 30: see PARA 339 ante.
- 28 For the meaning of 'sound recording' see PARA 84 ante.
- 29 Copyright, Designs and Patents Act 1988 s 79(4)(a) (s 79(4)(a), (b) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 3(1)(g), (h)). For the meaning of 'broadcast' see PARA 89 ante.
- 30 Ie the Copyright, Designs and Patents Act 1988 s 31: see PARA 342 ante.
- 31 Ibid s 79(4)(b) (as amended: see note 29 supra).
- 32 Ie ibid s 32(3): see PARA 347 ante.
- 33 Ibid s 79(4)(c).
- 34 Ie ibid s 45: see PARA 365 ante.

- 35 Ibid s 79(4)(d).
- 36 Ie ibid s 46(1) or (2): see PARA 366 ante.
- 37 Ibid s 79(4)(e).
- 38 Ie ibid s 51: see PARA 376 ante.
- 39 Ibid s 79(4)(f).
- 40 Ie ibid s 52: see PARA 378 ante.
- 41 Ibid s 79(4)(g).
- 42 Ie ibid s 57 (see PARA 384 ante) or s 66A (as added) (see PARA 394 ante).
- 43 Ibid s 79(4)(h) (amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 6(3)).
- 44 Ie the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).
- 45 Ibid reg 26(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(2) RIGHT TO BE IDENTIFIED AS AUTHOR OR DIRECTOR/462. Joint works.

462. Joint works.

The right to be identified as author of a work or director of a film¹ is, in the case of a work of joint authorship², a right of each joint author to be identified as a joint author and must be asserted³ by each joint author in relation to himself⁴. Any waiver of the right⁵ by one joint author does not affect the rights of the other joint authors⁶.

The above provisions also apply, with any necessary adaptations, in relation to a film which was, or is alleged to have been, jointly directed⁷, as they apply to a work which is, or is alleged to be, a work of joint authorship⁸. A film made on or after 1 July 1994 is treated as a work of joint authorship unless the producer⁹ and principal director are the same person¹⁰. Only the director is, however, entitled to moral rights¹¹.

1 Ie the right conferred by the Copyright, Designs and Patents Act 1988 s 77 (as amended): see PARA 456 ante. For the meaning of 'film' see PARA 86 ante.

2 For the meaning of 'work of joint authorship' see PARA 113 ante.

3 Ie in accordance with the Copyright, Designs and Patents Act 1988 s 78: see PARAS 458-459 ante.

4 Ibid s 88(1).

5 Ie under ibid s 87: see PARA 482 post.

6 Ibid s 88(3).

7 A film is 'jointly directed' if it is made by the collaboration of two or more directors and the contribution of each director is not distinct from that of the other director or directors: ibid s 88(5).

8 Ibid s 88(5).

9 For the meaning of 'producer' see PARA 110 note 3 ante.

10 Copyright, Designs and Patents Act 1988 s 10(1A) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(2)); Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 36(1).

11 See the Copyright, Designs and Patents Act 1988 s 77(1); and PARA 456 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(3) RIGHT TO OBJECT TO DEROGATORY TREATMENT OF WORK/463. Right to object to derogatory treatment of work.

(3) RIGHT TO OBJECT TO DEROGATORY TREATMENT OF WORK

463. Right to object to derogatory treatment of work.

Subject to certain exceptions¹, the author² of a copyright³ literary⁴, dramatic⁵, musical⁶ or artistic⁷ work who was alive on 1 August 1989⁸, and the director of a copyright film⁹ made on or after that date, has the right in specified circumstances¹⁰ not to have his work subjected to derogatory treatment¹¹.

The right applies in relation to the whole or any part of a work¹².

1 Ie subject to the Copyright, Designs and Patents Act 1988 s 81 (see PARA 468 post) and s 82 (as amended) (see PARA 469 post). As to the further exceptions in relation to works made before 1 August 1989 see PARA 465 post.

2 For the meaning of 'author' see PARA 110 ante.

3 For the meaning of 'copyright work' see PARA 57 ante.

4 For the meaning of 'literary work' see PARA 67 ante.

5 For the meaning of 'dramatic work' see PARA 73 ante.

6 For the meaning of 'musical work' see PARA 73 ante.

7 For the meaning of 'artistic work' see PARA 75 ante.

8 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

9 For the meaning of 'film' see PARA 86 ante.

10 Ie the circumstances mentioned in the Copyright, Designs and Patents Act 1988 s 80(3)-(6) (as amended): see PARA 466 post.

11 Ibid ss 80(1), (8), 170, Sch 1 para 23(1)(b), (2). For the meaning of 'derogatory treatment' see PARA 464 post.

12 Ibid s 89(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(3) RIGHT TO OBJECT TO DEROGATORY TREATMENT OF WORK/464. Meaning of 'derogatory treatment'.

464. Meaning of 'derogatory treatment'.

'Treatment' of a work means¹ any addition to, deletion from or alteration to or adaptation² of the work, other than a translation of a literary³ or dramatic work⁴, or an arrangement or transcription of a musical work⁵ involving no more than a change of key or register⁶.

The treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author⁷ or director⁸; and references⁹ to a derogatory treatment of a work are to be construed accordingly¹⁰.

1 le for the purposes of the Copyright, Designs and Patents Act 1988 s 80 (as amended): see PARAS 463 ante, 466-468 post.

2 For the meaning of 'adaptation' see PARA 327 ante.

3 For the meaning of 'literary work' see PARA 67 ante.

4 Copyright, Designs and Patents Act 1988 s 80(2)(a)(i). For the meaning of 'dramatic work' see PARA 73 ante.

5 For the meaning of 'musical work' see PARA 73 ante.

6 Copyright, Designs and Patents Act 1988 s 80(2)(a)(ii).

7 For the meaning of 'author' see PARA 110 ante.

8 Copyright, Designs and Patents Act 1988 s 80(2)(b). The mere fact that a work has been distorted or mutilated does not amount to derogatory treatment unless the distortion or mutilation also prejudices the author's honour or reputation: *Confetti Records (a firm) v Warner Music UK Ltd (t/a East West Records)* [2003] EWHC 1274 (Ch), [2003] EMLR 790, [2003] All ER (D) 61 (Jun). See also *Morrison Leahy Music Ltd v Lightbond Ltd* [1993] EMLR 144 (arguable that a selection of short snatches of music with accompanying lyrics to form a compilation ('megamix') amounted to derogatory treatment).

9 le in the Copyright, Designs and Patents Act 1988 s 80(3)-(8) (as amended): see PARAS 466-468 post.

10 Ibid s 80(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(3) RIGHT TO OBJECT TO DEROGATORY TREATMENT OF WORK/465. Works made before 1 August 1989.

465. Works made before 1 August 1989.

The right of an author or director to object to derogatory treatment of his work¹ does not apply in relation to a literary², dramatic³, musical⁴ or artistic⁵ work the author⁶ of which died before 1 August 1989⁷ or in relation to a film⁸ made before that date⁹. In relation to a literary, dramatic, musical or artistic work made before 1 August 1989¹⁰, the right to object to derogatory treatment does not apply: (1) where copyright first vested¹¹ in the author, to anything which, by virtue of an assignment¹² of copyright made or licence¹³ granted before 1 August 1989, may be done without infringing copyright¹⁴; or (2) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner¹⁵. Nor does the right to object to derogatory treatment apply to anything done in relation to a record made¹⁶ pursuant to a statutory recording licence under the Copyright Act 1956¹⁷.

1 Ie the right conferred by the Copyright, Designs and Patents Act 1988 s 80: see PARA 463 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 For the purposes of moral rights, the question who was the author of a work made before 1 August 1989 is to be determined in accordance with the Copyright, Designs and Patents Act 1988 ss 9, 10 (see PARAS 110, 113 ante): s 170, Sch 1 para 10. For the meaning of 'author' see PARA 110 ante.

7 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

8 For the meaning of 'film' see PARA 86 ante.

9 Copyright, Designs and Patents Act 1988 Sch 1 para 23(1)(b), (2).

10 For these purposes, a work the making of which extended over a period is to be taken to have been made when its making was completed: *ibid* Sch 1 para 1(3).

11 As to such vesting see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.

12 As to assignment of copyright see PARA 160 et seq ante.

13 As to licences of copyright see PARA 175 et seq ante.

14 Copyright, Designs and Patents Act 1988 Sch 1 para 23(1)(b), (3)(a). As to infringement of copyright see PARA 311 et seq ante.

15 *Ibid* Sch 1 para 23(1)(b), (3)(b). For the meaning of references to the licence of the copyright owner see PARAS 121, 175 notes 4, 6 ante.

16 Ie a record made in pursuance of the Copyright Act 1956 s 8 (repealed).

17 Copyright, Designs and Patents Act 1988 Sch 1 para 23(1)(b), (4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(3) RIGHT TO OBJECT TO DEROGATORY TREATMENT OF WORK/466. Infringement of the right.

466. Infringement of the right.

In the case of a literary¹, dramatic² or musical³ work, the right⁴ of an author⁵ to object to derogatory treatment⁶ of the work is infringed by a person who:

- 72 (1) publishes commercially⁷, performs⁸ in public or communicates to the public⁹ a derogatory treatment of the work¹⁰; or
- 73 (2) issues to the public copies¹¹ of a film¹² or sound recording¹³ of, or including, a derogatory treatment of the work¹⁴.

In the case of an artistic work¹⁵, the right is infringed by a person who:

- 74 (a) publishes commercially or exhibits in public¹⁶ a derogatory treatment of the work, or communicates to the public a visual image of a derogatory treatment of the work¹⁷;
- 75 (b) shows in public¹⁸ a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film¹⁹; or
- 76 (c) in the case of a work of architecture²⁰ in the form of a model for a building²¹, a sculpture²² or a work of artistic craftsmanship²³, issues to the public copies of a graphic work²⁴ representing, or of a photograph²⁵ of, a derogatory treatment of the work²⁶.

In the case of a film, the right is infringed by a person who shows in public or communicates to the public a derogatory treatment of the film²⁷ or issues to the public copies of a derogatory treatment of the film²⁸.

The right to object to derogatory treatment extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director, if those parts are attributed to, or are likely to be regarded as the work of, the author or director²⁹.

Infringement is actionable as a breach of statutory duty owed to the person entitled to the right³⁰. In proceedings for infringement of the right, the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work³¹.

1 For the meaning of 'literary work' see PARA 67 ante.

2 For the meaning of 'dramatic work' see PARA 73 ante.

3 For the meaning of 'musical work' see PARA 73 ante.

4 Ie the right conferred by the Copyright, Designs and Patents Act 1988 s 80: see PARA 463 ante.

5 For the meaning of 'author' see PARA 110 ante.

6 For the meaning of 'derogatory treatment' see PARA 464 ante.

7 For the meaning of 'publishes commercially' see PARA 63 ante.

- 8 For the meaning of 'perform' see PARA 324 ante.
- 9 For the meaning of 'communication to the public' see PARA 326 ante.
- 10 Copyright, Designs and Patents Act 1988 s 80(3)(a) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 10(1)(a)).
- 11 As to references to the issue to the public of copies of a work see PARA 322 ante.
- 12 For the meaning of 'film' see PARA 86 ante.
- 13 For the meaning of 'sound recording' see PARA 84 ante.
- 14 Copyright, Designs and Patents Act 1988 s 80(3)(b).
- 15 For the meaning of 'artistic work' see PARA 75 ante.
- 16 As to the meaning of 'exhibit in public' see PARA 330 note 10 ante.
- 17 Copyright, Designs and Patents Act 1988 s 80(4)(a) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 13(2)).
- 18 As to the meaning of 'show in public' see PARAS 324-325 ante.
- 19 Copyright, Designs and Patents Act 1988 s 80(4)(b).
- 20 For the meaning of 'work of architecture' see PARA 79 ante.
- 21 Copyright, Designs and Patents Act 1988 s 80(4)(c)(i). For the meaning of 'building' see PARA 79 ante.
- 22 Ibid s 80(4)(c)(ii). For the meaning of 'sculpture' see PARA 78 ante.
- 23 Ibid s 80(4)(c)(iii). For the meaning of 'work of artistic craftsmanship' see PARA 80 ante.
- 24 For the meaning of 'graphic work' see PARA 76 ante.
- 25 For the meaning of 'photograph' see PARA 77 ante.
- 26 Copyright, Designs and Patents Act 1988 s 80(4)(c). Section 80(4) does not apply to a work of architecture in the form of a building; but, where the author of such a work is identified on the building and it is the subject of derogatory treatment, he has the right to require the identification to be removed: s 80(5).
- 27 Ibid s 80(6)(a) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 10(1)(b)).
- 28 Copyright, Designs and Patents Act 1988 s 80(6)(b) (amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 9(2)).
- 29 Copyright, Designs and Patents Act 1988 s 80(7).
- 30 Ibid s 103(1). In such a claim the statutory presumptions contained in ss 104, 105 (as amended) apply: see PARAS 431-432 ante. As to breach of statutory duty see TORT vol 97 (2010) PARA 495 et seq.
- 31 Ibid s 103(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(3) RIGHT TO OBJECT TO DEROGATORY TREATMENT OF WORK/467. Infringement of right by possessing or dealing with infringing article.

467. Infringement of right by possessing or dealing with infringing article.

The right¹ of an author² or director to object to derogatory treatment³ of a work is also infringed⁴ by a person who:

- 77 (1) possesses in the course of a business⁵; or
- 78 (2) sells⁶ or lets for hire, or offers or exposes for sale⁷ or hire⁸; or
- 79 (3) in the course of a business exhibits in public⁹ or distributes¹⁰; or
- 80 (4) distributes otherwise than in the course of a business so as to affect prejudicially the honour or reputation of the author or director¹¹,

an article which is, and which he knows or has reason to believe¹² is, an infringing article¹³.

An 'infringing article' means a work or a copy of a work which has been subjected to derogatory treatment¹⁴ and has been or is likely to be the subject of any of the specified acts¹⁵ in circumstances infringing that right¹⁶.

1 le the right conferred by the Copyright, Designs and Patents Act 1988 s 80: see PARA 463 ante.

2 For the meaning of 'author' see PARA 110 ante.

3 For the meaning of 'derogatory treatment' see PARA 464 ante.

4 As to other circumstances in which the right is infringed see PARA 466 ante.

5 Copyright, Designs and Patents Act 1988 s 83(1)(a). For the meaning of 'business' see PARA 105 note 6 ante. As to the meaning of 'possession in the course of a business' see PARA 330 notes 4, 5 ante.

6 As to the meaning of 'sell' see PARA 330 note 6 ante.

7 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante.

8 Copyright, Designs and Patents Act 1988 s 83(1)(b).

9 As to the meaning of 'exhibit in public' see PARA 330 note 10 ante.

10 Copyright, Designs and Patents Act 1988 s 83(1)(c). As to the meaning of 'distribution' see PARA 330 note 11 ante.

11 Ibid s 83(1)(d).

12 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

13 Copyright, Designs and Patents Act 1988 s 83(1). As to claims in respect of an infringement see PARA 466 text to notes 30-31 ante.

14 Ibid s 83(2)(a).

15 le the acts mentioned in ibid s 80 (as amended): see PARA 466 ante.

16 Ibid s 83(2)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(3) RIGHT TO OBJECT TO DEROGATORY TREATMENT OF WORK/468. Exceptions to right.

468. Exceptions to right.

The right¹ of an author² or director to object to derogatory treatment³ of a work is subject to the following exceptions⁴.

The right does not apply to a computer program or to any computer-generated⁵ work⁶, or in relation to any work made for the purpose of reporting current events⁷.

The right does not apply in relation to the publication⁸ in a newspaper, magazine or similar periodical⁹, or in an encyclopaedia, dictionary, yearbook or other collective work of reference¹⁰, of a literary¹¹, dramatic¹², musical¹³ or artistic¹⁴ work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication¹⁵. Nor does the right apply in relation to any subsequent exploitation elsewhere of such a work without any modification of the published version¹⁶.

The right is not infringed by an act which, by virtue of the provisions¹⁷ relating to acts permitted when expiry of copyright etc is assumed, would not infringe copyright¹⁸. Nor is the right infringed by anything done for the purpose of:

- 81 (1) avoiding the commission of an offence¹⁹;
- 82 (2) complying with a duty imposed by or under an enactment²⁰; or
- 83 (3) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast²¹ by it of anything which offends against good taste or decency or which is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling²²,

provided that, where the author or director is identified at the time of the relevant act or has previously been identified in or on published copies²³ of the work, there is a sufficient disclaimer²⁴.

The right is not infringed by the doing on or after 1 January 1996²⁵ of anything in pursuance of arrangements made before that date for the exploitation of the soundtrack of a film²⁶.

1 The right conferred by the Copyright, Designs and Patents Act 1988 s 80: see PARA 463 ante.

2 For the meaning of 'author' see PARA 110 ante.

3 For the meaning of 'derogatory treatment' see PARA 464 ante.

4 Copyright, Designs and Patents Act 1988 s 81(1).

5 For the meaning of 'computer-generated' see PARA 96 note 18 ante.

6 Copyright, Designs and Patents Act 1988 s 81(2). As to the copyright in computer programs see PARA 72 ante.

7 Ibid s 81(3). As to reporting current events see PARA 339 ante.

8 For the meaning of 'publication' see PARA 63 ante.

9 Copyright, Designs and Patents Act 1988 s 81(4)(a).

10 Ibid s 81(4)(b).

- 11 For the meaning of 'literary work' see PARA 67 ante.
- 12 For the meaning of 'dramatic work' see PARA 73 ante.
- 13 For the meaning of 'musical work' see PARA 73 ante.
- 14 For the meaning of 'artistic work' see PARA 75 ante.
- 15 Copyright, Designs and Patents Act 1988 s 81(4).
- 16 Ibid s 81(4).
- 17 Ie ibid s 57 (see PARA 384 ante) or s 66A (as added) (see PARA 394 ante).
- 18 Ibid s 81(5) (amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 6(3)). As to infringement of the right by possessing or dealing with infringing articles see PARA 467 post.
- 19 Copyright, Designs and Patents Act 1988 s 81(6)(a). For the meaning of 'enactment' see PARA 55 note 4 ante.
- 20 Ibid s 81(6)(b).
- 21 For the meaning of 'broadcast' see PARA 89 ante.
- 22 Copyright, Designs and Patents Act 1988 s 81(6)(c). There is no specific exception for the commercial broadcasting companies which must, therefore, rely on the exception of the commission of an offence: see s 81(6)(a); and the text to note 19 supra.
- 23 For the meaning of 'copies' see PARA 314 ante.
- 24 Copyright, Designs and Patents Act 1988 s 81(6). 'Sufficient disclaimer', in relation to an act capable of infringing the right to object to derogatory treatment of a work, means a clear and reasonably prominent indication given at the time of the act and, if the author or director is then identified, appearing along with the identification, that the work has been subjected to treatment to which the author or director has not consented: s 178.
- 25 Ie the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).
- 26 Ibid reg 26(4). For the meaning of 'film' see PARA 86 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(3) RIGHT TO OBJECT TO DEROGATORY TREATMENT OF WORK/469. Qualification of right in certain cases.

469. Qualification of right in certain cases.

In relation to:

- 84 (1) works in which copyright¹ originally vested² in the author's³ or director's employer⁴;
- 85 (2) works in which Crown copyright⁵ or Parliamentary copyright⁶ subsist⁷; and
- 86 (3) works in which copyright originally vested⁸ in an international organisation⁹,

the right¹⁰ of an author or director to object to derogatory treatment¹¹ of a work does not apply to anything done by or with the authority of the copyright owner¹², unless the author or director is identified at the time of the relevant act¹³ or has previously been identified in or on published¹⁴ copies¹⁵ of the work¹⁶; and where in such a case the right does apply, it is not infringed if there is a sufficient disclaimer¹⁷.

1 For the meaning of 'copyright' see PARA 57 ante.

2 Ie by virtue of the Copyright, Designs and Patents Act 1988 s 11(2): see PARA 118 ante.

3 For the meaning of 'author' see PARA 110 ante.

4 Copyright, Designs and Patents Act 1988 s 82(1)(a) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 18(2)). For the meaning of 'employer' see PARA 118 note 12 ante.

5 For the meaning of 'Crown copyright' see PARA 144 ante.

6 For the meaning of 'Parliamentary copyright' see PARA 150 ante.

7 Copyright, Designs and Patents Act 1988 s 82(1)(b).

8 Ie by virtue of *ibid* s 168: see PARA 155 ante.

9 *Ibid* s 82(1)(c). For the meaning of 'international organisation' see PARA 155 note 8 ante.

10 Ie the right conferred by *ibid* s 80: see PARA 463 ante.

11 For the meaning of 'derogatory treatment' see PARA 464 ante.

12 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

13 Copyright, Designs and Patents Act 1988 s 82(2)(a).

14 For the meaning of 'published' see PARA 63 ante.

15 For the meaning of 'copies' see PARA 314 ante.

16 Copyright, Designs and Patents Act 1988 s 82(2)(b).

17 *Ibid* s 82(2). For the meaning of 'sufficient disclaimer' see PARA 468 note 24 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(3) RIGHT TO OBJECT TO DEROGATORY TREATMENT OF WORK/470. Joint works.

470. Joint works.

The right¹ of an author² to object to derogatory treatment³ of a work is, in the case of a work of joint authorship⁴, a right of each joint author and his right is satisfied if he consents to the treatment in question⁵. Any waiver⁶ of the right by one joint author does not affect the rights of the other joint authors⁷.

These provisions also apply, with any necessary adaptations, in relation to a film⁸ which was, or is alleged to have been, jointly directed⁹, as they apply to a work which is, or is alleged to be, a work of joint authorship¹⁰. A film made on or after 1 July 1994 is treated as a work of joint authorship unless the producer¹¹ and principal director are the same person¹². Only the director is, however, entitled to moral rights¹³.

1 The right conferred by the Copyright, Designs and Patents Act 1988 s 80: see PARA 463 ante.

2 For the meaning of 'author' see PARA 110 ante.

3 For the meaning of 'derogatory treatment' see PARA 464 ante.

4 For the meaning of 'work of joint authorship' see PARA 113 ante.

5 Copyright, Designs and Patents Act 1988 s 88(2).

6 Ibid s 87: see PARA 482 post.

7 Ibid s 88(3).

8 For the meaning of 'film' see PARA 86 ante.

9 For the meaning of 'jointly directed' see PARA 462 note 7 ante.

10 Copyright, Designs and Patents Act 1988 s 88(5).

11 For the meaning of 'producer' see PARA 110 note 3 ante.

12 Copyright, Designs and Patents Act 1988 s 10(1A) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(2)); Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 36(1).

13 See the Copyright, Designs and Patents Act 1988 s 80(1); and PARA 463 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(4) FALSE ATTRIBUTION OF A WORK/471. False attribution of work.

(4) FALSE ATTRIBUTION OF A WORK

471. False attribution of work.

A person has the right in the specified circumstances¹:

- 87 (1) not to have a literary², dramatic³, musical⁴ or artistic⁵ work falsely attributed to him as author⁶; and
- 88 (2) not to have a film⁷ falsely attributed to him as director⁸,

and, for these purposes, an 'attribution', in relation to such a work, means a statement, express or implied, as to who is the author or director⁹.

The right applies in relation to the whole or any part of a work¹⁰.

1 In the circumstances mentioned in the Copyright, Designs and Patents Act 1988 s 84 (as amended): see PARA 472 post.

2 For the meaning of 'literary work' see PARA 67 ante.

3 For the meaning of 'dramatic work' see PARA 73 ante.

4 For the meaning of 'musical work' see PARA 73 ante.

5 For the meaning of 'artistic work' see PARA 75 ante.

6 Copyright, Designs and Patents Act 1988 s 84(1)(a). For the meaning of 'author' see PARA 110 ante. Cf the Copyright Act 1956 s 43 (repealed); and see *Moore v News of the World Ltd* [1972] 1 QB 441, [1972] 1 All ER 915, CA; *Noah v Shuba* [1991] FSR 14 (decided under the corresponding provisions of the Copyright Act 1956 s 43 (repealed)).

7 For the meaning of 'film' see PARA 86 ante.

8 Copyright, Designs and Patents Act 1988 s 84(1)(b).

9 Ibid s 84(1). A representation can only have one single correct meaning and, if a claim under s 84 (as amended) is to be established, that meaning must be the false attribution of authorship. In order to succeed, a claimant must establish that the work in question contains what would be understood by a reasonable reader to be a false attribution, and not merely what is or may be understood by some or more people to be a false attribution: *Clark v Associated Newspapers Ltd* [1998] 1 All ER 959, [1998] RPC 261. The work must be substantial enough to warrant protection: see *Noah v Shuba* [1991] FSR 14 (decided under the corresponding provisions of the Copyright Act 1956 s 43 (repealed)); *Exxon Corp v Exxon Insurance Consultants International Ltd* [1982] Ch 119, [1981] 3 All ER 241, CA (copyright).

10 Copyright, Designs and Patents Act 1988 s 89(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(4) FALSE ATTRIBUTION OF A WORK/472. Infringement of the right.

472. Infringement of the right.

The right¹ of an author² or director not to have a work or film³ falsely attributed to him is infringed by a person who:

- 89 (1) issues to the public copies⁴ of a literary⁵, dramatic⁶, musical⁷ or artistic⁸ work or a film in or on which there is a false attribution⁹; or
- 90 (2) exhibits in public¹⁰ an artistic work, or a copy¹¹ of an artistic work, in or on which there is a false attribution¹².

The right is also infringed by a person who:

- 91 (a) in the case of a literary, dramatic or musical work, performs¹³ the work in public or communicates it to the public¹⁴ as being the work of a person¹⁵; or
- 92 (b) in the case of a film, shows it in public¹⁶ or communicates it to the public as being directed by a person¹⁷,

knowing or having reason to believe¹⁸ that the attribution is false¹⁹.

The right is also infringed by the issue to the public or public display of material containing a false attribution in connection with any of the acts mentioned above²⁰.

These provisions apply where, contrary to the fact, a literary, dramatic or musical work is falsely represented as being an adaptation²¹ of the work of a person²², or a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work²³, as it applies where the work is falsely attributed to a person as author²⁴.

An infringement is actionable as a breach of statutory duty owed to the person entitled to the right²⁵. Any infringement of the right after a person's death is actionable by his personal representatives²⁶; and any damages recovered by personal representatives in respect of an infringement after a person's death devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death²⁷.

1 The right conferred by the Copyright, Designs and Patents Act 1988 s 84: see PARA 471 ante.

2 For the meaning of 'author' see PARA 110 ante.

3 For the meaning of 'film' see PARA 86 ante.

4 As to references to the issue to the public of copies of a work see PARA 322 ante.

5 For the meaning of 'literary work' see PARA 67 ante.

6 For the meaning of 'dramatic work' see PARA 73 ante.

7 For the meaning of 'musical work' see PARA 73 ante.

8 For the meaning of 'artistic work' see PARA 75 ante.

9 Copyright, Designs and Patents Act 1988 s 84(2)(a). For the meaning of 'attribution' see PARA 471 ante.

- 10 As to the meaning of 'exhibit in public' see PARA 330 note 10 ante.
- 11 For the meaning of 'copy' see PARA 314 ante.
- 12 Copyright, Designs and Patents Act 1988 s 84(2)(b).
- 13 For the meaning of 'perform' see PARA 324 ante.
- 14 For the meaning of 'communication to the public' see PARA 326 ante.
- 15 Copyright, Designs and Patents Act 1988 s 84(3)(a) (s 84(3)(a), (b) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 10(2)).
- 16 As to the meaning of 'show in public' see PARAS 324-325 ante.
- 17 Copyright, Designs and Patents Act 1988 s 84(3)(b) (as amended: see note 15 supra).
- 18 As to the meaning of 'know or have reason to believe' see PARA 334 ante.
- 19 Copyright, Designs and Patents Act 1988 s 84(3).
- 20 Ibid s 84(4).
- 21 For the meaning of 'adaptation' see PARA 327 ante.
- 22 Copyright, Designs and Patents Act 1988 s 84(8)(a).
- 23 Ibid s 84(8)(b).
- 24 Ibid s 84(8).
- 25 Ibid s 103(1). In such a claim the statutory presumptions contained in ss 104, 105 (as amended) apply: see PARAS 431-432 ante. As to breach of statutory duty see TORT vol 97 (2010) PARA 495 et seq.
- 26 Ibid s 95(5). As to personal representatives see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 1 et seq.
- 27 Ibid s 95(6). As to devolution of copyright on death see PARA 172 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(4) FALSE ATTRIBUTION OF A WORK/473. Infringement of the right by possessing or dealing with copy bearing false attribution.

473. Infringement of the right by possessing or dealing with copy bearing false attribution.

The right¹ of an author² or director not to have a work or film³ falsely attributed to him is also infringed by a person who in the course of a business⁴:

- 93 (1) possesses or deals⁵ with a copy⁶ of a literary⁷, dramatic⁸, musical⁹ or artistic¹⁰ work or a film in or on which there is a false attribution¹¹; or
- 94 (2) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it¹²,

knowing or having reason to believe¹³ that there is such an attribution and that it is false¹⁴.

1 The right conferred by the Copyright, Designs and Patents Act 1988 s 84: see PARA 471 ante.

2 For the meaning of 'author' see PARA 110 ante.

3 For the meaning of 'film' see PARA 86 ante.

4 For the meaning of 'business' see PARA 105 note 6 ante. As to the meaning of 'possession in the course of a business' see PARA 330 notes 4, 5 ante.

5 References to dealing are references to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public, or distributing: Copyright, Designs and Patents Act 1988 s 84(7). As to the meanings of 'sell' and 'offer or expose for sale or hire' see PARA 330 notes 6-8 ante; as to the meaning of 'exhibit in public' see PARA 330 note 10 ante; and as to the meaning of 'distribute' see PARA 330 note 11 ante.

6 For the meaning of 'copy' see PARA 314 ante.

7 For the meaning of 'literary work' see PARA 67 ante.

8 For the meaning of 'dramatic work' see PARA 73 ante.

9 For the meaning of 'musical work' see PARA 73 ante.

10 For the meaning of 'artistic work' see PARA 75 ante.

11 Copyright, Designs and Patents Act 1988 s 84(5)(a). For the meaning of 'attribution' see PARA 471 ante.

12 Ibid s 84(5)(b).

13 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

14 Copyright, Designs and Patents Act 1988 s 84(5). As to altered artistic works see PARA 474 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(4) FALSE ATTRIBUTION OF A WORK/474. Altered artistic works.

474. Altered artistic works.

In the case of an artistic work¹, the right² of an author³ not to have a work falsely attributed⁴ to him is also infringed by a person who in the course of a business⁵:

- 95 (1) deals⁶ with a work which has been altered after the author parted with possession of it as being the unaltered work of the author⁷; or
- 96 (2) deals with a copy⁸ of such a work as being a copy of the unaltered work of the author⁹,

knowing or having reason to believe¹⁰ that that is not the case¹¹.

1 For the meaning of 'artistic work' see PARA 75 ante.

2 The right conferred by the Copyright, Designs and Patents Act 1988 s 84: see PARA 471 ante.

3 For the meaning of 'author' see PARA 110 ante.

4 For the meaning of 'attribution' see PARA 471 ante.

5 For the meaning of 'business' see PARA 105 note 6 ante.

6 As to references to dealing see PARA 473 note 5 ante.

7 Copyright, Designs and Patents Act 1988 s 84(6)(a).

8 For the meaning of 'copy' see PARA 314 ante.

9 Copyright, Designs and Patents Act 1988 s 84(6)(b).

10 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

11 Copyright, Designs and Patents Act 1988 s 84(6). There were no reported cases under the Copyright Act 1956 s 43 (repealed). The Copyright Act 1911 did not contain any such provisions but preserved the Fine Arts Copyright Act 1862 s 7 (repealed). See *Carlton Illustrators v Coleman & Co Ltd* [1911] 1 KB 771; *Preston v Raphael Tuck & Sons* [1926] Ch 667 (both cases decided under the Fine Arts Copyright Act 1862). See also *Crocker v Papunya Tula Artists Pty Ltd* (1985) 5 IPR 426.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(4) FALSE ATTRIBUTION OF A WORK/475. Joint works.

475. Joint works.

The right¹ of an author² not to have a work falsely attributed to him is infringed³ by any false statement as to the authorship of a work of joint authorship⁴, and by the false attribution⁵ of joint authorship in relation to a work of sole authorship⁶; and such false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed⁷.

These provisions also apply, with any necessary adaptations, in relation to a film⁸ which was, or is alleged to have been, jointly directed⁹, as they apply to a work which is, or is alleged to be, a work of joint authorship¹⁰. A film made on or after 1 July 1994 is treated as a work of joint authorship unless the producer¹¹ and principal director are the same person¹². Only the director is, however, entitled to moral rights¹³.

1 The right conferred by the Copyright, Designs and Patents Act 1988 s 84: see PARA 471 ante.

2 For the meaning of 'author' see PARA 110 ante.

3 The right is infringed in the circumstances mentioned in the Copyright, Designs and Patents Act 1988 s 84(2)-(6) (as amended): see PARAS 472-474 ante.

4 Ibid s 88(4)(a). For the meaning of 'work of joint authorship' see PARA 113 ante.

5 For the meaning of 'attribution' see PARA 471 ante.

6 Copyright, Designs and Patents Act 1988 s 88(4)(b).

7 Ibid s 88(4).

8 For the meaning of 'film' see PARA 86 ante.

9 For the meaning of 'jointly directed' see PARA 462 note 7 ante.

10 Copyright, Designs and Patents Act 1988 s 88(5).

11 For the meaning of 'producer' see PARA 110 note 3 ante.

12 Copyright, Designs and Patents Act 1988 s 10(1A) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 18(2)); Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 36(1).

13 See the Copyright, Designs and Patents Act 1988 s 84(1); and PARA 471 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(5) RIGHT TO PRIVACY OF CERTAIN PHOTOGRAPHS AND FILMS/476. Right to privacy of certain photographs and films.

(5) RIGHT TO PRIVACY OF CERTAIN PHOTOGRAPHS AND FILMS

476. Right to privacy of certain photographs and films.

A person who for private and domestic purposes commissions¹ the taking of a photograph² or the making of a film³ has, where copyright⁴ subsists in the resulting work⁵, the right not to have:

- 97 (1) copies of the work issued to the public⁶;
- 98 (2) the work exhibited⁷ or shown in public⁸; or
- 99 (3) the work communicated to the public⁹,

and, subject to certain exceptions¹⁰, a person who does or authorises¹¹ the doing of any of those acts infringes that right¹². The right applies in relation to the whole or any substantial part of a work¹³.

Infringement is actionable as a breach of statutory duty owed to the person entitled to the right¹⁴.

1 As to commissioned works see PARA 126 ante. See also *Mail Newspapers plc v Express Newspapers plc* [1987] FSR 90 (engaged couple who commissioned wedding photographs held to be joint owners of the copyright).

2 For the meaning of 'photograph' see PARA 75 ante.

3 For the meaning of 'film' see PARA 86 ante.

4 For the meaning of 'copyright' see PARA 57 ante.

5 As to subsistence of copyright in photographs see PARA 75 ante; and as to subsistence of copyright in films see PARA 86 ante.

6 Copyright, Designs and Patents Act 1988 s 85(1)(a). As to references to the issue to the public of copies of a work see PARA 322 ante.

7 As to the meaning of 'exhibit in public' see PARA 330 note 10 ante.

8 Copyright, Designs and Patents Act 1988 s 85(1)(b). As to the meaning of 'show in public' see PARAS 324-325 ante.

9 Ibid s 85(1)(c) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 8(2)(b)). For the meaning of 'communication to the public' see PARA 326 ante.

10 In subject to the exceptions in the Copyright, Designs and Patents Act 1988 s 85(2) (as amended): see PARA 478 post.

11 As to the meaning of 'authorise' see PARA 328 ante.

12 Copyright, Designs and Patents Act 1988 s 85(1). Cf *Williams v Settle* [1960] 2 All ER 806, [1960] 1 WLR 1072, CA; *Mail Newspapers plc v Express Newspapers plc* [1987] FSR 90 (both cases being copyright infringement actions).

13 Copyright, Designs and Patents Act 1988 s 89(1). As to the meaning of 'substantial part' see PARA 321 ante.

14 Ibid s 103(1). In such a claim the statutory presumptions contained in ss 104, 105 (as amended) apply: see PARAS 431-432 ante. As to breach of statutory duty see TORT vol 97 (2010) PARA 495 et seq.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(5) RIGHT TO PRIVACY OF CERTAIN PHOTOGRAPHS AND FILMS/477. Photographs taken and films made before 1 August 1989.

477. Photographs taken and films made before 1 August 1989.

The right¹ to privacy of certain photographs and films does not apply to photographs taken or films made before 1 August 1989².

¹ See the right conferred by the Copyright, Designs and Patents Act 1988 s 85 (as amended): see PARA 476 ante.

² Ibid s 170, Sch 1 para 24. The date mentioned in the text is the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(5) RIGHT TO PRIVACY OF CERTAIN PHOTOGRAPHS AND FILMS/478. Exceptions to the right.

478. Exceptions to the right.

The right¹ to privacy of certain photographs² and films³ is not infringed by an act which, by virtue of any of the provisions mentioned in heads (1) to (5) below, would not infringe copyright⁴ in the work:

- 100 (1) the provisions⁵ relating to the incidental inclusion of a work in an artistic work, film or broadcast⁶;
- 101 (2) the provisions⁷ relating to Parliamentary and judicial proceedings⁸;
- 102 (3) the provisions⁹ relating to Royal Commissions and statutory inquiries¹⁰;
- 103 (4) the provisions¹¹ relating to acts done under statutory authority¹²;
- 104 (5) the provisions¹³ relating to acts permitted when expiry of copyright etc is assumed¹⁴.

1 Ie the right conferred by the Copyright, Designs and Patents Act 1988 s 85 (as amended): see PARA 476 ante.

2 For the meaning of 'photograph' see PARA 77 ante.

3 For the meaning of 'film' see PARA 86 ante.

4 For the meaning of 'copyright' see PARA 57 ante.

5 Ie the Copyright, Designs and Patents Act 1988 s 31 (as amended): see PARA 342 ante.

6 Ibid s 85(2)(a) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(1)(i)).

7 Ie the Copyright, Designs and Patents Act 1988 s 45: see PARA 365 ante.

8 Ibid s 85(2)(b).

9 Ie ibid s 46: see PARA 366 ante.

10 Ibid s 85(2)(c).

11 Ie ibid s 50: see PARA 370 ante.

12 Ibid s 85(2)(d).

13 Ie ibid s 57 (see PARA 384 ante) or s 66A (as added) (see PARA 394 ante).

14 Ibid s 85(2)(e) (amended by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 6(3)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(5) RIGHT TO PRIVACY OF CERTAIN PHOTOGRAPHS AND FILMS/479. Joint works.

479. Joint works.

The right¹ to privacy of certain photographs and films is, in the case of a work made in pursuance of a joint commission², a right of each person who commissioned the making of the work, so that the right of each is satisfied if he consents to the act in question³ and a waiver⁴ by one of them does not affect the rights of the others⁵.

1 Ie the right conferred by the Copyright, Designs and Patents Act 1988 s 85 (as amended): see PARA 476 ante.

2 As to commissioned works see PARA 126 ante. See also PARA 476 note 1 ante.

3 Copyright, Designs and Patents Act 1988 s 88(6)(a).

4 Ie under *ibid* s 87: see PARA 482 post.

5 *Ibid* s 88(6)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(6) DURATION OF MORAL RIGHTS/480. Duration of rights.

(6) DURATION OF MORAL RIGHTS

480. Duration of rights.

The right to be identified as author or director¹, the right to object to derogatory treatment of a work² and the right to privacy of certain photographs and films³ continue to subsist so long as copyright⁴ subsists in the work⁵.

The right⁶ relating to false attribution continues to subsist until 20 years after a person's death⁷.

1 Ie the right conferred by the Copyright, Designs and Patents Act 1988 s 77 (as amended): see PARA 456 et seq ante.

2 Ie the right conferred by ibid s 80 (as amended): see PARA 463 et seq ante.

3 Ie the right conferred by ibid s 85 (as amended): see PARA 476 et seq ante.

4 For the meaning of 'copyright' see PARA 57 ante.

5 Copyright, Designs and Patents Act 1988 s 86(1). As to the duration of copyright see PARA 93 et seq ante.

6 Ie the right conferred by ibid s 84 (as amended): see PARA 471 et seq ante.

7 Ibid s 86(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(6) DURATION OF MORAL RIGHTS/481. Revived copyright; exercise of moral rights.

481. Revived copyright; exercise of moral rights.

The following provisions have effect with respect to the exercise of moral rights¹ in relation to a work in which there is revived copyright².

Moral rights are exercisable after 1 January 1996³ by the author⁴ of a work or, as the case may be, the director of a film⁵ in which revived copyright subsists, as with any other copyright work⁶.

Where the author or director died before 1 January 1996, the right to be identified as an author or director⁷, the right to object to derogatory treatment of a work⁸ and the right to privacy of certain photographs and films⁹ are each exercisable on and after that date by his personal representatives¹⁰; and any infringement after that date of the right not to have a work falsely attributed¹¹ is actionable by his personal representatives¹². Any damages recovered by personal representatives¹³ in respect of an infringement after a person's death devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death¹⁴.

It is not an infringement of any moral right to do anything which is not an infringement¹⁵ of revived copyright¹⁶.

Any waiver or assertion of moral rights which subsisted immediately before the expiry of copyright¹⁷ continues to have effect during the period of revived copyright¹⁸.

1 Ie the rights conferred by the Copyright, Designs and Patents Act 1988 Pt I Ch IV (ss 77-89) (as amended): see PARA 456 et seq ante.

2 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 22(1). For the meaning of 'revived copyright' see PARA 93 note 18 ante.

Nothing in the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/329 (as amended) is, however, to be construed as causing a moral right to be exercisable if, or to the extent that, the right was excluded by virtue of the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 23 or Sch 1 para 24 (see PARAS 457, 465, 477 ante) on 1 August 1989 (ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante) or would have been so excluded if copyright had not previously expired: Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 22(6).

3 Ie the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: see reg 1(2).

4 For the meaning of 'author' see PARA 110 ante.

5 For the meaning of 'film' see PARA 86 ante.

6 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 22(3). For the meaning of 'copyright work' see PARA 57 ante.

7 Ie the right conferred by the Copyright, Designs and Patents Act 1988 s 77 (as amended): see PARA 456 et seq ante.

8 Ie the right conferred by ibid s 80 (as amended): see PARA 463 et seq ante.

9 Ie the right conferred by ibid s 85 (as amended): see PARA 476 et seq ante.

10 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 22(4)(a). As to personal representatives see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 1 et seq.

- 11 le the right conferred by the Copyright, Designs and Patents Act 1988 s 84 (as amended): see PARA 471 et seq ante.
- 12 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 22(4)(b).
- 13 le by virtue of ibid reg 22.
- 14 Ibid reg 22(5).
- 15 le by virtue of ibid reg 23: see PARA 313 ante.
- 16 Ibid reg 23(6).
- 17 le under the provisions of the Copyright, Designs and Patents Act 1988 as they stood immediately before 1 January 1996 (see note 3 supra), including the provisions of Sch 1 continuing the effect of earlier enactments.
- 18 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 22(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(7) CONSENT AND WAIVER/482. Consent and waiver of rights.

(7) CONSENT AND WAIVER

482. Consent and waiver of rights.

It is not an infringement of any of the moral rights¹ to do any act to which the person entitled to the right has consented².

Any of those rights may be waived by instrument in writing signed by the person giving up the right³. A waiver:

- 105 (1) may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works⁴; and
- 106 (2) may be conditional or unconditional and may be expressed to be subject to revocation⁵,

and, if made in favour of the owner⁶ or prospective owner⁷ of the copyright⁸ in the work or works to which it relates, it is presumed to extend to his licensees and successors in title unless a contrary intention is expressed⁹.

Nothing in these provisions¹⁰ is to be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to any of the moral rights¹¹.

1 I.e. the rights conferred by the Copyright, Designs and Patents Act 1988 Pt I Ch IV (ss 77-89) (as amended): see PARA 456 et seq ante.

2 Ibid s 87(1).

3 Ibid s 87(2).

The requirement that an instrument be signed by the person giving up the right is satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal: s 176(2). As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

4 Copyright, Designs and Patents Act 1988 s 87(3)(a).

5 Ibid s 87(3)(b).

6 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

7 For the meaning of 'prospective owner' see PARA 162 ante.

8 For the meaning of 'copyright' see PARA 57 ante.

9 Copyright, Designs and Patents Act 1988 s 87(3).

10 I.e. ibid Pt I Ch IV (ss 77-89) (as amended).

11 Ibid s 87(4). As to waiver see CONTRACT vol 9(1) (Reissue) PARA 1025 et seq.

UPDATE

482 Consent and waiver of rights

NOTE 3--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1): see COMPANIES vol 14 (2009) PARA 283.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(8) DEALINGS IN MORAL RIGHTS/483. Non-assignability.

(8) DEALINGS IN MORAL RIGHTS

483. Non-assignability.

Moral rights¹ are not assignable².

¹ I.e. the rights conferred by the Copyright, Designs and Patents Act 1988 Pt I Ch IV (ss 77-89) (as amended): see PARA 456 et seq ante.

² Ibid s 94.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/3. MORAL RIGHTS/(8) DEALINGS IN MORAL RIGHTS/484. Transmission of moral rights on death.

484. Transmission of moral rights on death.

On the death of a person entitled to the right to be identified as an author or director¹, the right to object to derogatory treatment of a work², or the right to privacy of certain photographs and films³:

- 107 (1) the right passes to such person as he may by testamentary disposition specifically direct⁴;
- 108 (2) if there is no such direction but the copyright⁵ in the work in question forms part of his estate, the right passes to the person to whom the copyright passes⁶; and
- 109 (3) if, or to the extent that, the right does not pass under head (1) or head (2) above, it is exercisable by his personal representatives⁷.

Where copyright forming part of a person's estate passes in part to one person and in part to another, as, for example, where a bequest is limited so as to apply:

- 110 (a) to one or more, but not all, of the things the copyright owner⁸ has the exclusive right to do or authorise⁹; or
- 111 (b) to part, but not the whole, of the period for which the copyright is to subsist¹⁰,

any right which passes with the copyright¹¹ is correspondingly divided¹².

Where, by virtue of head (1) or head (2) above, a right becomes exercisable by more than one person:

- 112 (i) it may, in the case of the right to be identified as an author or director, be asserted¹³ by any of them¹⁴;
- 113 (ii) it is, in the case of the right to object to derogatory treatment of a work or the right to privacy of certain photographs and films, a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question¹⁵; and
- 114 (iii) any waiver of the right¹⁶ by one of them does not affect the rights of the others¹⁷.

A consent or waiver previously given or made binds any person to whom a right passes by virtue of heads (1) to (3) above¹⁸.

1 Ie the right conferred by the Copyright, Designs and Patents Act 1988 s 77 (as amended): see PARA 456 et seq ante.

2 Ie the right conferred by ibid s 80 (as amended): see PARA 463 et seq ante.

3 Ie the right conferred by ibid s 85 (as amended): see PARA 476 et seq ante.

4 Ibid s 95(1)(a).

5 For the meaning of 'copyright' see PARA 57 ante.

6 Copyright, Designs and Patents Act 1988 s 95(1)(b). As to the transmission of copyright on death see PARA 172 ante.

7 Ibid s 95(1)(c). As to personal representatives see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 1 et seq. Any damages recovered by personal representatives by virtue of s 95 in respect of an infringement after a person's death devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death: s 95(6).

8 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

9 Copyright, Designs and Patents Act 1988 s 95(2)(a). As to such acts see ss 16-21 (as amended); and PARA 311 et seq ante.

10 Ibid s 95(2)(b). As to the duration of copyright see PARA 93 et seq ante.

11 Ie by virtue of ibid s 95(1): see the text to notes 1-7 supra.

12 Ibid s 95(2).

13 As to assertion of the right see PARA 458 ante.

14 Copyright, Designs and Patents Act 1988 s 95(3)(a).

15 Ibid s 95(3)(b).

16 Ie in accordance with ibid s 87: see PARA 482 ante.

17 Ibid s 95(3)(c).

18 Ibid s 95(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/4. CIRCUMVENTION OF PROTECTION MEASURES ETC/(1) CIRCUMVENTION OF PROTECTION MEASURES/485. Circumvention of technical devices applied to computer programs.

4. CIRCUMVENTION OF PROTECTION MEASURES ETC

(1) CIRCUMVENTION OF PROTECTION MEASURES

485. Circumvention of technical devices applied to computer programs.

The following provisions apply where:

- 115 (1) a technical device¹ has been applied to a computer program²; and
- 116 (2) a person, 'A', knowing or having reason to believe³ that it will be used to
make infringing copies⁴:
- 575 6. (a) manufactures for sale or hire, imports⁵, distributes, sells⁶ or lets for hire,
offers or exposes for sale⁷ or hire, advertises for sale or hire or has in his
possession for commercial purposes any means the sole intended purpose of
which is to facilitate the unauthorised removal or circumvention of the
technical device⁸; or
- 7. (b) publishes information intended to enable or assist persons to remove or
circumvent the technical device⁹.
- 576

The following persons have the same rights against A as a copyright owner has in respect of an infringement of copyright:

- 117 (i) a person issuing to the public copies of¹⁰, or communicating to the public¹¹, the
computer program to which the technical device has been applied¹²;
- 118 (ii) the copyright owner or his exclusive licensee¹³, if he is not the person
specified in head (i) above¹⁴;
- 119 (iii) the owner or exclusive licensee of any intellectual property right in the
technical device applied to the computer program¹⁵.

The rights conferred by heads (i) to (iii) above are concurrent¹⁶; and the persons granted rights under those heads have the same rights¹⁷ regarding delivery up or seizure of certain articles in relation to any means¹⁸ which a person has in his possession, custody or control with the intention that it should be used to facilitate the unauthorised removal or circumvention of any technical device which has been applied to a computer program, as a copyright owner has in relation to an infringing copy¹⁹.

1 References to a technical device in relation to a computer program are references to any device intended to prevent or restrict acts that are not authorised by the copyright owner of that computer program and are restricted by copyright: Copyright, Designs and Patents Act 1988 s 296(6) (s 296 substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 24(1)). As to who is the owner of the copyright in a work see PARA 118 et seq ante. As to acts restricted by copyright in relation to computer programs see PARA 318 et seq ante.

2 Copyright, Designs and Patents Act 1988 s 296(1)(a) (as substituted: see note 1 supra).

- 3 As to the meaning of 'know or have reason to believe' see PARA 334 ante.
- 4 For the meaning of 'infringing copy' see PARA 335 ante. See also *Kabushiki Kaisha Sony Computer Entertainment Inc v Ball* [2004] EWHC 1738 (Ch), [2004] 39 LS Gaz R 34, (2004) Times, 21 October, [2004] All ER (D) 334 (Jul).
- 5 As to the meaning of 'import' see PARA 329 note 4 ante.
- 6 As to the meaning of 'sell' see PARA 330 note 6 ante.
- 7 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante.
- 8 Copyright, Designs and Patents Act 1988 s 296(1)(b)(i) (as substituted: see note 1 supra).
- 9 Ibid s 296(1)(b)(ii) (as substituted: see note 1 supra).
- 10 Ibid s 296(2)(a)(i) (as substituted: see note 1 supra). As to references to the issue to the public of copies of a work see PARA 322 ante.
- 11 Ibid s 296(2)(a)(ii) (as substituted: see note 1 supra). For the meaning of 'communication to the public' see PARA 326 ante.
- 12 Ibid s 296(2)(a) (as substituted: see note 1 supra).
- 13 'Exclusive licensee' is not defined in the Copyright, Designs and Patents Act 1988, but for the meaning of 'exclusive licence' see PARA 176 ante.
- 14 Ibid s 296(2)(b) (as substituted: see note 1 supra).
- 15 Ibid s 296(2)(c) (as substituted: see note 1 supra).
- 16 Ibid s 296(3) (as substituted: see note 1 supra). The provisions of s 101(3) and s 102(1)-(4) (see PARA 429 ante) apply in proceedings under s 296(3) (as substituted) in relation to persons with concurrent rights as they apply in proceedings mentioned in those provisions in relation to a copyright owner and exclusive licensee with concurrent rights: s 296(3) (as so substituted).
- 17 Ie under ibid s 99 (see PARA 420 ante) or s 100 (see PARA 421 ante).
- 18 Ie any such means as is referred to in ibid s 296(1) (as substituted): see the text to notes 1-9 supra.
- 19 Ibid s 296(4) (as substituted: see note 1 supra). The rights conferred by s 296(4) (as substituted) are concurrent, and s 102(5) (see PARA 429 ante) applies as respects anything done under s 99 (see PARA 420 ante) or s 100 (see PARA 421 ante) by virtue of s 296(4) (as substituted) in relation to persons with concurrent rights as it applies as respects anything done under s 99 or s 100 in relation to a copyright owner and exclusive licensee with concurrent rights: s 296(5) (as so substituted).

The following provisions apply in relation to proceedings under s 296 (as substituted) as in relation to proceedings under Pt 1 (ss 1-179) (as amended) (copyright):

- 6 (1) ss 104-106 (presumptions as to certain matters relating to copyright: see PARAS 431-433 ante); and
- 7 (2) the Supreme Court Act 1981 s 72 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property: see PARA 435 ante),

and the Copyright, Designs and Patents Act 1988 s 114 (see PARA 422 ante) applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of s 296(4) (as substituted): s 296(7) (as so substituted).

UPDATE

485 Circumvention of technical devices applied to computer programs

NOTE 19--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/4. CIRCUMVENTION OF PROTECTION MEASURES ETC/(1) CIRCUMVENTION OF PROTECTION MEASURES/486. Circumvention of technological measures.

486. Circumvention of technological measures.

The following provisions apply where effective technological measures¹ have been applied to a copyright work other than a computer program² and a person, 'B', does anything which circumvents those measures knowing, or with reasonable grounds to know, that he is pursuing that objective³. However, the provisions do not apply where a person, for the purposes of research into cryptography, does anything which circumvents effective technological measures unless in so doing, or in issuing information derived from that research, he affects prejudicially the rights of the copyright owner⁴.

The following persons have the same rights against B as a copyright owner has in respect of an infringement of copyright⁵:

- 120 (1) a person issuing to the public copies of⁶, or communicating to the public⁷, the work to which effective technological measures have been applied⁸; and
- 121 (2) the copyright owner or his exclusive licensee⁹, if he is not the person specified in head (1) above¹⁰.

The rights conferred by heads (1) and (2) above are concurrent¹¹.

The above provisions¹² and any other provision of the Copyright, Designs and Patents Act 1988 as it has effect for the purposes of those provisions apply, with any necessary adaptations, to rights in performances, publication right and database right¹³.

1 'Technological measures' are any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work other than a computer program; and such measures are 'effective' if the use of the work is controlled by the copyright owner through an access control or protection process such as encryption, scrambling or other transformation of the work, or a copy control mechanism, which achieves the intended protection: Copyright, Designs and Patents Act 1988 s 296ZF(1), (2) (ss 296ZA, 296ZF both added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 24(1)). For the meaning of 'copyright work' see PARA 57 ante; and as to who is the owner of the copyright in a work see PARA 118 et seq ante. The reference in the Copyright, Designs and Patents Act 1988 s 296ZF (as added) to protection of a work is a reference to the prevention or restriction of acts that are not authorised by the copyright owner of that work and are restricted by copyright; and the reference to use of a work does not extend to any use of the work that is outside the scope of the acts restricted by copyright: s 296ZF(3) (as so added). For the meaning of 'acts restricted by copyright' see PARA 311 ante.

2 Ibid s 296ZA(1)(a) (as added: see note 1 supra).

3 Ibid s 296ZA(1)(b) (as added: see note 1 supra). See *Kabushiki Kaisha Sony Computer Entertainment Inc v Ball* [2004] EWHC 1738 (Ch), [2004] 39 LS Gaz R 34, (2004) Times, 21 October, [2004] All ER (D) 334 (Jul).

4 Copyright, Designs and Patents Act 1988 s 296ZA(2) (as added: see note 1 supra).

5 As to infringement of copyright see PARA 311 et seq ante.

6 Copyright, Designs and Patents Act 1988 s 296ZA(3)(a)(i) (as added: see note 1 supra). As to references to the issue to the public of copies of a work see PARA 322 ante.

7 Ibid s 296ZA(3)(a)(ii) (as added: see note 1 supra). For the meaning of 'communication to the public' see PARA 326 ante.

8 Ibid s 296ZA(3)(a) (as added: see note 1 supra).

9 'Exclusive licensee' is not defined in the Copyright, Designs and Patents Act 1988, but for the meaning of 'exclusive licence' see PARA 176 ante.

10 Ibid s 296ZA(3)(b) (as added: see note 1 supra).

11 Ibid s 296ZA(4) (as added: see note 1 supra). Sections 101(3) and 102(1)-(4) (see PARA 429 ante) apply in proceedings under s 296ZA(4) (as added) in relation to persons with concurrent rights as they apply in proceedings mentioned in those provisions in relation to a copyright owner and exclusive licensee with concurrent rights: s 296ZA(4) (as so added).

The following provisions apply in relation to proceedings under s 296ZA (as added) as in relation to proceedings under Pt 1 (ss 1-179) (as amended) (copyright): (1) ss 104-106 (presumptions as to certain matters relating to copyright: see PARAS 431-433 ante) (s 296ZA(5)(a) (as so added)); and (2) the Supreme Court Act 1981 s 72 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property: see PARA 435 ante) (Copyright, Designs and Patents Act 1988 s 296ZA(5)(b) (as so added)).

12 Ie ibid s 296ZA(1)-(4), (5)(b) (as added): see the text and notes 1-11 supra.

13 Ibid s 296ZA(6) (as added: see note 1 supra). As to rights in performances see PARA 604 et seq post; as to publication right see PARA 497 et seq post; and as to database right see PARA 730 et seq post. The provisions of the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 22 (presumptions relevant to database right: see PARA 773 post) apply in proceedings brought by virtue of the Copyright, Designs and Patents Act 1988 s 296ZA (as added) in relation to database right: s 296ZA(7) (as so added).

UPDATE

486 Circumvention of technological measures

NOTE 11--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/4. CIRCUMVENTION OF PROTECTION MEASURES ETC/(1) CIRCUMVENTION OF PROTECTION MEASURES/487. Devices and services designed to circumvent technological measures.

487. Devices and services designed to circumvent technological measures.

A person commits an offence if he:

- 122 (1) manufactures for sale or hire¹; or
- 123 (2) imports² otherwise than for his private and domestic use³; or
- 124 (3) in the course of a business⁴:
- 577
 - 8. (a) sells⁵ or lets for hire⁶; or
 - 9. (b) offers or exposes for sale⁷ or hire⁸; or
 - 10. (c) advertises for sale or hire⁹; or
 - 11. (d) possesses¹⁰; or
 - 12. (e) distributes¹¹; or
- 578
- 125 (4) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner¹²,

any device, product or component which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures¹³.

A person also commits an offence if he provides, promotes, advertises or markets:

- 126 (i) in the course of a business¹⁴; or
- 127 (ii) otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner¹⁵,

a service the purpose of which is to enable or facilitate the circumvention of effective technological measures¹⁶.

However, the above provisions do not make unlawful anything done by, or on behalf of, law enforcement agencies or any of the intelligence services¹⁷ in the interests of national security¹⁸, or for the purpose of the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution¹⁹.

A person guilty of an offence under the above provisions is liable to a penalty²⁰.

It is a defence to any prosecution for any such offence for the defendant to prove that he did not know, and had no reasonable ground for believing²¹, that the device, product or component²², or the service²³, enabled or facilitated the circumvention of effective technological measures²⁴.

1 Copyright, Designs and Patents Act 1988 s 296ZB(1)(a) (ss 296ZB, 296ZC both added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 24(1)).

2 As to the meaning of 'import' see PARA 329 note 4 ante.

3 Copyright, Designs and Patents Act 1988 s 296ZB(1)(b) (as added: see note 1 supra).

4 For the meaning of 'business' see PARA 105 note 6 ante.

- 5 As to the meaning of 'sell' see PARA 330 note 6 ante.
- 6 Copyright, Designs and Patents Act 1988 s 296ZB(1)(c)(i) (as added: see note 1 supra).
- 7 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante.
- 8 Copyright, Designs and Patents Act 1988 s 296ZB(1)(c)(ii) (as added: see note 1 supra).
- 9 Ibid s 296ZB(1)(c)(iii) (as added: see note 1 supra).
- 10 Ibid s 296ZB(1)(c)(iv) (as added: see note 1 supra).
- 11 Ibid s 296ZB(1)(c)(v) (as added: see note 1 supra). As to the meaning of 'distribute' see PARA 330 note 11 ante.
- 12 Ibid s 296ZB(1)(d) (as added: see note 1 supra). As to who is the owner of the copyright in a work see PARA 118 et seq ante.
- 13 Ibid s 296ZB(1) (as added: see note 1 supra). For the meaning of 'effective technological measures' see PARA 486 note 1 ante. The provisions of s 297B (as added) (search warrants: see PARA 493 post) and s 297C (as added) (forfeiture of unauthorised decoders: see PARA 494 post) apply to offences under s 296ZB (as added) with modifications: see s 296ZC(1)-(4) (as so added).
- 14 Ibid s 296ZB(2)(a) (as added: see note 1 supra).
- 15 Ibid s 296ZB(2)(b) (as added: see note 1 supra).
- 16 Ibid s 296ZB(2) (as added: see note 1 supra). See also note 13 supra.
- 17 'Intelligence services' has the meaning given in the Regulation of Investigatory Powers Act 2000 s 81: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 476.
- 18 Copyright, Designs and Patents Act 1988 s 296ZB(3)(a) (as added: see note 1 supra).
- 19 Ibid s 296ZB(3)(b) (as added: see note 1 supra).
- 20 Ibid s 296ZB(4) (as added: see note 1 supra). The penalty on summary conviction is imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum, or both (see s 296ZB(4)(a) (as so added)); and on conviction on indictment is a fine, or imprisonment for a term not exceeding two years, or both (see s 296ZB(4)(b) (as so added)). For the meaning of 'statutory maximum' see PARA 437 note 33 ante.
- 21 As to the meaning of 'know or have reason to believe' see PARA 334 ante.
- 22 Copyright, Designs and Patents Act 1988 s 296ZB(5)(a) (as added: see note 1 supra).
- 23 Ibid s 296ZB(5)(b) (as added: see note 1 supra).
- 24 Ibid s 296ZB(5) (as added: see note 1 supra).

UPDATE

487 Devices and services designed to circumvent technological measures

TEXT AND NOTE 1--To establish an offence of selling a device which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures, it is not enough if the technological measure is a discouragement or general commercial hindrance to copyright infringement, it has to be a measure which physically prevents it: *R v Higgs* [2008] EWCA Crim 1324, [2009] 1 WLR 73, [2008] All ER (D) 318 (Jun).

NOTES 13, 16--See *R v Gilham* [2009] EWCA Crim 2293, [2009] All ER (D) 89 (Nov) (defendant dealt in modification computer chips which enabled counterfeit games to be played on games consoles).

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488. Rights and remedies in respect of devices and services designed to circumvent technological measures.

The following provisions apply where:

- 128 (1) effective technological measures¹ have been applied to a copyright work² other than a computer program³; and
- 129 (2) a person, 'C', manufactures, imports⁴, distributes⁵, sells⁶ or lets for hire, offers or exposes for sale⁷ or hire, advertises for sale or hire, or has in his possession for commercial purposes any device, product or component, or provides services which:
- 579 13. (a) are promoted, advertised or marketed for the purpose of the circumvention of⁸; or
- 14. (b) have only a limited commercially significant purpose or use other than to circumvent⁹; or
- 15. (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of¹⁰,
- 580 130 those measures¹¹.

The following persons have the same rights against C as a copyright owner¹² has in respect of an infringement of copyright¹⁴:

- 131 (i) a person issuing to the public copies of¹⁵, or communicating to the public¹⁶, the work to which effective technological measures have been applied¹⁷;
- 132 (ii) the copyright owner or his exclusive licensee¹⁸, if he is not the person specified in head (i) above¹⁹; and
- 133 (iii) the owner or exclusive licensee of any intellectual property right in the effective technological measures applied to the work²⁰.

The rights conferred by heads (i) to (iii) above are concurrent²¹. Further, the persons in those heads have the same rights²² of delivery up or seizure of certain articles in relation to any such device, product or component which a person has in his possession, custody or control with the intention that it should be used to circumvent effective technological measures, as a copyright owner has in relation to any infringing copy²³.

The above provisions²⁴ and any other provision of the Copyright, Designs and Patents Act 1988 as it has effect for the purposes of those provisions apply, with any necessary adaptations, to rights in performances, publication right and database right²⁵.

1 For the meaning of 'effective technological measures' see PARA 486 note 1 ante.

2 For the meaning of 'copyright work' see PARA 57 ante.

3 Copyright, Designs and Patents Act 1988 s 296ZD(1)(a) (s 296ZD added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 24(1)).

4 As to the meaning of 'import' see PARA 329 note 4 ante.

5 As to the meaning of 'distribute' see PARA 330 note 11 ante.

6 As to the meaning of 'sell' see PARA 330 note 6 ante.

7 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante.

8 Copyright, Designs and Patents Act 1988 s 296ZD(1)(b)(i) (as added: see note 3 supra).

9 Ibid s 296ZD(1)(b)(ii) (as added: see note 3 supra).

10 Ibid s 296ZD(1)(b)(iii) (as added: see note 3 supra).

11 Ibid s 296ZD(1)(b) (as added: see note 3 supra). The tort created by s 296ZD (as added) is one of strict liability and it is not necessary to show knowledge of circumvention on the part of the defendant: *Kabushiki Kaisha Sony Computer Entertainment Inc v Ball* [2004] EWHC 1738 (Ch), [2004] 39 LS Gaz R 34, (2004) Times, 21 October, [2004] All ER (D) 334 (Jul). The Copyright, Designs and Patents Act 1988 s 296ZD (as added) does not cover circumvention outside the jurisdiction: *Kabushiki Kaisha Sony Computer Entertainment Inc v Ball* supra.

12 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

14 As to infringement of copyright see PARA 311 et seq ante.

15 Copyright, Designs and Patents Act 1988 s 296ZD(2)(a)(i) (as added: see note 3 supra). As to references to the issue to the public of copies of a work see PARA 322 ante.

16 Ibid s 296ZD(2)(a)(ii) (as added: see note 3 supra). For the meaning of 'communication to the public' see PARA 326 ante.

17 Ibid s 296ZD(2)(a) (as added: see note 3 supra).

18 'Exclusive licensee' is not defined in the Copyright, Designs and Patents Act 1988, but for the meaning of 'exclusive licence' see PARA 176 ante.

19 Ibid s 296ZD(2)(b) (as added: see note 3 supra).

20 Ibid s 296ZD(2)(c) (as added: see note 3 supra).

21 Ibid s 296ZD(3) (as added: see note 3 supra). The provisions of s 101(3) and s 102(1)-(4) (see PARA 429 ante) apply in proceedings under s 296ZD (as added) in relation to persons with concurrent rights as they apply in proceedings mentioned in those provisions in relation to a copyright owner and exclusive licensee with concurrent rights: s 296ZD(3) (as so added).

22 Ie under ibid s 99 (see PARA 420 ante) or s 100 (see PARA 421 ante).

23 Ibid s 296ZD(4) (as added: see note 3 supra). For the meaning of 'infringing copy' see PARA 335 ante. The rights conferred by s 296ZD(4) (as added) are concurrent, and s 102(5) (see PARA 429 ante) applies as respects anything done under s 99 or s 100 by virtue of s 296ZD(4) (as added) in relation to persons with concurrent rights as it applies as respects anything done under s 99 or s 100 in relation to a copyright owner and exclusive licensee with concurrent rights: s 296ZD(5) (as so added).

The following provisions apply in relation to proceedings under s 296ZD (as added) as in relation to proceedings under Pt 1 (ss 1-179) (as amended) (copyright):

8 (1) ss 104-106 (presumptions as to certain matters relating to copyright: see PARAS 431-433 ante) (s 296ZD(6)(a) (as so added)); and

9 (2) the Supreme Court Act 1981 s 72 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property: see PARA 435 ante) (Copyright, Designs and Patents Act 1988 s 296ZD(6)(b) (as so added)),

and s 114 (see PARA 422 ante) applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of s 296ZD(4) (as added) (s 296ZD(6) (as so added)).

In s 97(1) (innocent infringement of copyright: see PARA 407 ante) as it applies to proceedings for infringement of the rights conferred by s 296ZD (as added), the reference to the defendant not knowing or having reason to

believe that copyright subsisted in the work must be construed as a reference to his not knowing or having reason to believe that his acts enabled or facilitated an infringement of copyright: s 296ZD(7) (as so added). As to the meaning of 'know or have reason to believe' see PARA 334 ante.

24 le ibid s 296ZD(1)-(5), (6)(b), (7) (as added): see the text and notes 1-23 supra.

25 Ibid s 296ZD(8) (as added: see note 3 supra). As to rights in performances see PARA 604 et seq post; as to publication right see PARA 497 et seq post; and as to database right see PARA 730 et seq post. The provisions of the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 22 (presumptions relevant to database right: see PARA 773 post) apply in proceedings brought by virtue of the Copyright, Designs and Patents Act 1988 s 296ZD (as added) in relation to database right: s 296ZD(9) (as so added).

UPDATE

488 Rights and remedies in respect of devices and services designed to circumvent technological measures

NOTE 23--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/4. CIRCUMVENTION OF PROTECTION MEASURES ETC/(1) CIRCUMVENTION OF PROTECTION MEASURES/489. Remedy where effective technological measures prevent permitted acts.

489. Remedy where effective technological measures prevent permitted acts.

Where the application of any effective technological measure¹ to a copyright work² other than a computer program prevents a person from carrying out a permitted act³ in relation to that work, then that person, or a person being a representative of a class of persons prevented from carrying out a permitted act, may issue a notice of complaint to the Secretary of State⁴.

Following receipt of a notice of complaint, the Secretary of State may give to the owner of that copyright work⁵ or an exclusive licensee⁶ such directions as appear to the Secretary of State to be requisite or expedient for the purpose of: (1) establishing whether any voluntary measure or agreement⁷ relevant to the copyright work the subject of the complaint subsists⁸; or (2) where it is established there is no subsisting voluntary measure or agreement, ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant the means of carrying out the permitted act the subject of the complaint to the extent necessary to so benefit from that permitted act⁹. It is the duty of any person to whom a direction is given under head (1) or head (2) above to give effect to that direction¹⁰. The obligation to comply with a direction given under head (2) is a duty owed to the complainant or, where the complaint is made by a representative of a class of persons, to that representative and to each person in the class represented; and a breach of the duty is actionable accordingly, subject to the defences and other incidents applying to claims for breach of statutory duty¹¹.

The Secretary of State may also give directions:

- 134 (a) as to the form and manner in which a notice of complaint¹² may be delivered to him¹³;
- 135 (b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered to him¹⁴; and
- 136 (c) generally as to the procedure to be followed in relation to a complaint made under these provisions¹⁵,

and must publish those directions in such manner as in his opinion will secure adequate publicity for them¹⁶.

Any direction given under these provisions must be in writing¹⁷; and any such direction may be varied or revoked by a subsequent such direction¹⁸.

These provisions do not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them¹⁹. Further, these provisions apply only where a complainant has lawful access to the protected copyright work or, where the complainant is a representative of a class of persons, where the class of persons has lawful access to the work²⁰.

The above provisions²¹ apply, with any necessary adaptations, to rights in performances²², database right²³, and publication right²⁴.

1 For the meaning of 'effective technological measures' see PARA 486 note 1 ante.

2 For the meaning of 'copyright work' see PARA 57 ante.

3 'Permitted act' means an act which may be done in relation to copyright works, notwithstanding the subsistence of copyright, by virtue of a specified provision of the Copyright, Designs and Patents Act 1988: s 296ZE(1) (s 296ZE added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 24(1)). As to the specified provisions see the Copyright, Designs and Patents Act 1988 Sch 5A Pt 1 (Sch 5A added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 24(2), Sch 3).

4 Copyright, Designs and Patents Act 1988 s 296ZE(2) (as added: see note 3 supra). See also head (a) in the text. As to the Secretary of State see PARA 183 note 2 ante.

5 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

6 'Exclusive licensee' is not defined in the Copyright, Designs and Patents Act 1988, but for the meaning of 'exclusive licence' see PARA 176 ante.

7 'Voluntary measure or agreement' means: (1) any measure taken voluntarily by a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program; or (2) any agreement between a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program and another party, the effect of which is to enable a person to carry out a permitted act: *ibid* s 296ZE(1) (as added: see note 3 supra). As to references to the issue to the public of copies of a work see PARA 322 ante; and for the meaning of 'communication to the public' see PARA 326 ante.

8 *Ibid* s 296ZE(3)(a) (as added: see note 3 supra).

9 *Ibid* s 296ZE(3)(b) (as added: see note 3 supra).

10 *Ibid* s 296ZE(5) (as added: see note 3 supra).

11 *Ibid* s 296ZE(6) (as added: see note 3 supra). As to breach of statutory duty see TORT vol 97 (2010) PARA 495 et seq.

12 *Ie* a notice of complaint referred to in *ibid* s 296ZE(2) (as added): see the text to notes 1-4 supra.

13 *Ibid* s 296ZE(4)(a) (as added: see note 3 supra).

14 *Ibid* s 296ZE(4)(b) (as added: see note 3 supra).

15 *Ibid* s 296ZE(4)(c) (as added: see note 3 supra).

16 *Ibid* s 296ZE(4) (as added: see note 3 supra).

17 *Ibid* s 296ZE(8) (as added: see note 3 supra).

18 *Ibid* s 296ZE(7) (as added: see note 3 supra).

19 *Ibid* s 296ZE(9) (as added: see note 3 supra).

20 *Ibid* s 296ZE(10) (as added: see note 3 supra).

21 *Ie* *ibid* s 296ZE(1)-(10) (as added): see the text and notes 1-20 supra.

22 *Ibid* s 296ZE(11)(a) (as added: see note 3 supra). For these purposes, the expression 'permitted act' refers to an act that may be done by virtue of a provision of the Copyright, Designs and Patents Act 1988 listed in Sch 5A Pt 2 (as added): s 296ZE(11)(a) (as so added). As to rights in performances see PARA 604 et seq post.

23 *Ibid* s 296ZE(11)(b) (as added: see note 3 supra). For these purposes, the expression 'permitted act' refers to an act that may be done by virtue of a provision of the Copyright, Designs and Patents Act 1988 listed in Sch 5A Pt 3 (as added): s 296ZE(11)(b) (as so added). As to database right see PARA 730 et seq post.

24 *Ibid* s 296ZE(11)(c) (as added: see note 3 supra). As to publication right see PARA 497 et seq post.

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490. Electronic rights management information.

The following provisions apply:

- 137 (1) where a person, 'D', knowingly and without authority, removes or alters electronic¹ rights management information² which is associated with a copy³ of a copyright work⁴, or appears in connection with the communication to the public⁵ of a copyright work⁶, and where D knows, or has reason to believe⁷, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright⁸; and
- 138 (2) where a person, 'E', knowingly and without authority, distributes⁹, imports¹⁰ for distribution or communicates to the public copies of a copyright work from which electronic rights management information associated with the copies¹¹, or appearing in connection with the communication to the public of the work¹², has been removed or altered without authority and where E knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright¹³.

A person issuing to the public copies of the work¹⁴, or communicating the work to the public, has the same rights against D and E as a copyright owner has in respect of an infringement of copyright¹⁵. The copyright owner or his exclusive licensee¹⁶, if he is not the person issuing to the public copies of the work, or communicating the work to the public, also has the same rights against D and E as he has in respect of an infringement of copyright¹⁷. The rights¹⁸ conferred by these provisions are concurrent¹⁹.

These provisions²⁰, and any other provision of the Copyright, Designs and Patents Act 1988 as it has effect for the purposes of those provisions, apply, with any necessary adaptations, to rights in performances, publication right and database right²¹.

1 For the meaning of 'electronic' see PARA 184 note 2 ante.

2 'Rights management information' means any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information: Copyright, Designs and Patents Act 1988 s 296ZG(7)(b) (s 296ZG added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 25). As to who is the owner of the copyright in a work see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante; and for the meaning of 'author' see PARA 110 ante.

3 For the meaning of 'copy' see PARA 314 ante.

4 Copyright, Designs and Patents Act 1988 s 296ZG(1)(a) (as added: see note 2 supra). For the meaning of 'copyright work' see PARA 57 ante.

5 For the meaning of 'communication to the public' see PARA 326 ante.

6 Copyright, Designs and Patents Act 1988 s 296ZG(1)(b) (as added: see note 2 supra).

7 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

8 Copyright, Designs and Patents Act 1988 s 296ZG(1) (as added: see note 2 supra). As to infringement of copyright see PARA 311 et seq ante.

- 9 As to the meaning of 'distribute' see PARA 330 note 11 ante.
- 10 As to the meaning of 'import' see PARA 329 note 4 ante.
- 11 Copyright, Designs and Patents Act 1988 s 296ZG(2)(a) (as added: see note 2 supra).
- 12 Ibid s 296ZG(2)(b) (as added: see note 2 supra).
- 13 Ibid s 296ZG(2) (as added: see note 2 supra).
- 14 As to references to the issue to the public of copies of a work see PARA 322 ante.
- 15 Copyright, Designs and Patents Act 1988 s 296ZG(3) (as added: see note 2 supra).
- 16 'Exclusive licensee' is not defined in the Copyright, Designs and Patents Act 1988, but for the meaning of 'exclusive licence' see PARA 176 ante.
- 17 Ibid s 296ZG(4) (as added: see note 2 supra).
- 18 Ie the rights conferred by ibid s 296ZG(3), (4) (as added): see the text to notes 14-17 supra.
- 19 Ibid s 296ZG(5) (as added: see note 2 supra). The provisions of s 101(3) and s 102(1)-(4) (see PARA 429 ante) apply in proceedings under s 296ZG (as added) in relation to persons with concurrent rights as they apply in proceedings mentioned in those provisions in relation to a copyright owner and exclusive licensee with concurrent rights: s 296ZG(5) (as so added).

The following provisions apply in relation to proceedings under s 296ZG (as added) as in relation to proceedings under Pt 1 (ss 1-179) (as amended) (copyright): (1) ss 104-106 (presumptions as to certain matters relating to copyright: see PARAS 431-433 ante) (s 296ZG(6)(a) (as so added)); and (2) the Supreme Court Act 1981 s 72 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property: see PARA 435 ante) (Copyright, Designs and Patents Act 1988 s 296ZG(6)(b) (as so added)).
- 20 Ie ibid s 296ZG(1)-(5), (6)(b) (as added): see the text and notes 1-19 supra.
- 21 Ibid s 296ZG(8) (as added: see note 2 supra). As to rights in performances see PARA 604 et seq post; as to publication right see PARA 497 et seq post; and as to database right see PARA 730 et seq post. The provisions of the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 22 (presumptions relevant to database right: see PARA 773 post) apply in proceedings brought by virtue of the Copyright, Designs and Patents Act 1988 s 296ZG (as added) in relation to database right: s 296ZG(9) (as so added).

UPDATE

490 Electronic rights management information

NOTE 19--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/4. CIRCUMVENTION OF PROTECTION MEASURES ETC/(2) FRAUDULENT RECEPTION OF TRANSMISSIONS/491. Offence of fraudulently receiving programmes.

(2) FRAUDULENT RECEPTION OF TRANSMISSIONS

491. Offence of fraudulently receiving programmes.

A person who dishonestly receives a programme¹ included in a broadcasting² service provided from a place in the United Kingdom³ with intent to avoid payment of any charge applicable to the reception⁴ of the programme commits an offence and is liable to a penalty⁵.

Where such an offence committed by a body corporate is proved to have been committed with the consent or connivance⁶ of a director⁷, manager⁸, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly⁹.

1 As to references to a programme see PARA 89 note 5 ante; definition applied by the Copyright, Designs and Patents Act 1988 s 299(5) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(3)).

2 For the meaning of 'broadcasting' see PARA 89 ante; definition applied by the Copyright, Designs and Patents Act 1988 s 299(5) (as amended: see note 1 supra).

3 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

4 As to references to the reception of a broadcast see PARA 89 note 2 ante; definition applied by the Copyright, Designs and Patents Act 1988 s 299(5) (as amended: see note 1 supra).

5 Ibid s 297(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). The penalty on summary conviction is a fine not exceeding level 5 on the standard scale: see the Copyright, Designs and Patents Act 1988 s 297(1) (as so amended). As to the standard scale see PARA 437 note 33 ante.

Where the Copyright, Designs and Patents Act 1988 s 297 (as amended) applies in relation to a broadcasting service, it also applies to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both: s 299(4) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).

As to the power to provide that the Copyright, Designs and Patents Act 1988 s 297 (as amended) extends to the Isle of Man or any of the Channel Islands, or applies in relation to programmes included in services provided from a country or territory outside the United Kingdom, see PARA 496 post. Section 297 (as amended) applies in relation to programmes included in broadcasting or cable programme services provided from a place in the Bailiwick of Guernsey: Fraudulent Reception of Transmissions (Guernsey) Order 1989, SI 1989/2003, art 2.

6 As to the meaning of 'connive' see PARA 438 note 3 ante.

7 In relation to a body corporate whose affairs are managed by its members, 'director' means a member of the body corporate: Copyright, Designs and Patents Act 1988 s 297(2). See also PARA 438 note 2 ante.

8 As to the meaning of 'manager' see PARA 438 note 5 ante.

9 Copyright, Designs and Patents Act 1988 s 297(2).

UPDATE

491 Offence of fraudulently receiving programmes

NOTE 4--Payment of a charge to a broadcaster who the defendant knows does not have the right to broadcast in the United Kingdom is not inconsistent with an intent to avoid a United Kingdom-based broadcaster's charge: *Murphy v Media Protection Services Ltd* [2007] EWHC 3091 (Admin), [2008] 1 WLR 1869.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/4. CIRCUMVENTION OF PROTECTION MEASURES ETC/(2) FRAUDULENT RECEPTION OF TRANSMISSIONS/492. Unauthorised decoders.

492. Unauthorised decoders.

A person commits an offence if he:

- 139 (1) makes, imports¹, distributes, sells² or lets for hire, or offers or exposes for sale³ or hire any unauthorised decoder⁴;
- 140 (2) has in his possession for commercial purposes any unauthorised decoder⁵;
- 141 (3) installs, maintains or replaces for commercial purposes any unauthorised decoder⁶; or
- 142 (4) advertises any unauthorised decoder for sale or hire or otherwise promotes any unauthorised decoder by means of commercial communications⁷.

A person guilty of such an offence is liable to a penalty⁸.

It is a defence to any prosecution for such an offence for the defendant to prove that he did not know, and had no reasonable ground for believing⁹, that the decoder was an unauthorised decoder¹⁰.

1 As to the meaning of 'import' see PARA 329 note 4 ante.

2 As to the meaning of 'sell' see PARA 330 note 6 ante.

3 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante.

4 Copyright, Designs and Patents Act 1988 s 297A(1)(a) (s 297A added by the Broadcasting Act 1990 s 179(1); and substituted by the Conditional Access (Unauthorised Decoders) Regulations 2000, SI 2000/1175, regs 2(1), (2)). 'Decoder' means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded; 'apparatus' includes any device, component or electronic data (including software); 'encrypted' includes subjected to scrambling or the operation of cryptographic envelopes, electronic locks, passwords or any other analogous application; 'transmission' means: (1) any programme included in a broadcasting service which is provided from a place in the United Kingdom or any other member state; or (2) an information society service (within the meaning of EC Parliament and Council Directive 98/34 (OJ L204, 21.7.1998, p 37) of 22 June 1998, as amended by EC Parliament and Council Directive 98/48 (OJ L217, 5.8.1998, p 18) of 20 July 1998, which is provided from a place in the United Kingdom or any other member state; 'unauthorised', in relation to a decoder, means that the decoder is designed or adapted to enable an encrypted transmission, or any service of which it forms part, to be accessed in an intelligible form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for accessing the transmission or service (whether by the circumvention of any conditional access technology related to the transmission or service or by any other means); and 'conditional access technology' means any technical measure or arrangement whereby access to encrypted transmissions in an intelligible form is made conditional on prior individual authorisation: Copyright, Designs and Patents Act 1988 s 297A(4) (as so added and substituted; and further amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). For the meaning of 'broadcasting'; as to references to a programme; and as to references to a person making a broadcast see PARA 89 ante: definitions applied by the Copyright, Designs and Patents Act 1988 s 299(5) (amended by the Broadcasting Act 1990, s 179(2); and the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(3)). For the meaning of 'United Kingdom' see PARA 3 note 1 ante; and for the meaning of 'member state' see the Interpretation Act 1978 s 5, Sch 1; European Communities Act 1972 s 1(2), Sch 1 Pt II.

5 Copyright, Designs and Patents Act 1988 s 297A(1)(b) (as added and substituted: see note 4 supra).

6 Ibid s 297A(1)(c) (as added and substituted: see note 4 supra).

7 Ibid s 297A(1)(d) (as added and substituted: see note 4 supra).

8 The penalty on summary conviction is imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both (ibid s 297A(2)(a) (as added and substituted (see note 4 supra); and further substituted by the Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002 s 1(1), (4)(a)); and on conviction on indictment is imprisonment for a term not exceeding ten years, or a fine, or both (Copyright, Designs and Patents Act 1988 s 297A(2)(b) (as so added and substituted; and further amended by the Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002 s 1(1), (4)(b))). For the meaning of 'statutory maximum' see PARA 437 note 33 ante.

9 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

10 Copyright, Designs and Patents Act 1988 s 297A(3) (as added and substituted: see note 4 supra). As to the standard of proof to be met by the defendant see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1372.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/4. CIRCUMVENTION OF PROTECTION MEASURES ETC/(2) FRAUDULENT RECEPTION OF TRANSMISSIONS/493. Search warrants.

493. Search warrants.

Where a justice of the peace¹ is satisfied by information on oath² given by a constable³ that there are reasonable grounds for believing that an offence relating to unauthorised decoders⁴ has been or is about to be committed in any premises⁵, and that evidence that such an offence has been or is about to be committed is in those premises⁶, he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary⁷. A warrant may authorise persons to accompany any constable executing the warrant⁸. A warrant remains in force for three months from the date of its issue⁹.

In executing a warrant issued under these provisions a constable may seize an article if he reasonably believes that it is evidence that any offence relating to unauthorised decoders has been or is about to be committed¹⁰.

1 As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq.

2 For the meaning of 'oath' see PARA 441 note 2 ante.

3 As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

4 Ie an offence under the Copyright, Designs and Patents Act 1988 s 297A(1) (as added, substituted and amended): see PARA 492 ante.

5 Ibid s 297B(1)(a) (s 297B added by the Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002 s 2(1), (4)). 'Premises' includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft: Copyright, Designs and Patents Act 1988 s 297B(5) (as so added).

6 Ibid s 297B(1)(b) (as added: see note 5 supra).

7 Ibid s 297B(1) (as added: see note 5 supra). The power conferred by s 297B(1) (as added) does not extend to authorising a search for material of the kinds mentioned in the Police and Criminal Evidence Act 1984 s 9(2) (certain classes of personal or confidential material: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 874): Copyright, Designs and Patents Act 1988 s 297B(2) (as so added).

8 Ibid s 297B(3)(a) (as added: see note 5 supra).

9 Ibid s 297B(3)(b) (as added (see note 5 supra); and amended by the Serious Organised Crime and Police Act 2005 s 174(1), Sch 16 para 6(1), (4)).

10 Copyright, Designs and Patents Act 1988 s 297B(4) (as added: see note 5 supra).

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494. Forfeiture of unauthorised decoders.

Where unauthorised decoders¹ have come into the possession of any person in connection with the investigation or prosecution of a relevant offence², that person may apply under the following provisions for an order for the forfeiture of the unauthorised decoders³.

An application may be made:

- 143 (1) where proceedings have been brought in any court for a relevant offence relating to some or all of the unauthorised decoders, to that court⁴; or
- 144 (2) where no application for the forfeiture of the unauthorised decoders has been made under head (1) above, by way of complaint to a magistrates' court⁵.

On an application, the court must make an order for the forfeiture of any unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders⁶. A court may infer for these purposes that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence has been committed in relation to unauthorised decoders which are representative of the unauthorised decoders in question, whether by reason of being of the same design or part of the same consignment or batch or otherwise⁷. An order may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making⁸ and determination of any appeal⁹.

Any person aggrieved by an order made under these provisions by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision to the Crown Court¹⁰.

Where any unauthorised decoders are forfeited under these provisions they must be destroyed in accordance with such directions as the court may give¹¹. However, on making an order the court may direct that the unauthorised decoders to which the order relates must, instead of being destroyed, be forfeited to a person who has rights or remedies¹² in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate¹³.

1 As to unauthorised decoders see PARA 492 ante.

2 'Relevant offence' means an offence under the Copyright, Designs and Patents Act 1988 s 297A(1) (as added and substituted) (criminal liability for making, importing, etc unauthorised decoders: see PARA 492 ante), an offence under the Trade Descriptions Act 1968 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 471 et seq), or an offence involving dishonesty or deception: Copyright, Designs and Patents Act 1988 s 297C(2) (s 297C added by the Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002 s 5).

3 Copyright, Designs and Patents Act 1988 s 297C(1) (as added: see note 2 supra).

4 Ibid s 297C(3)(a) (as added: see note 2 supra).

5 Ibid s 297C(3)(b) (as added: see note 2 supra). As to complaints see MAGISTRATES vol 29(2) (Reissue) PARA 681.

6 Ibid s 297C(4) (as added: see note 2 supra).

7 Ibid s 297C(5) (as added: see note 2 supra).

8 Ie including any application under the Magistrates' Courts Act 1980 s 111 (application for case to be stated): see MAGISTRATES vol 29(2) (Reissue) PARA 885.

9 Copyright, Designs and Patents Act 1988 s 297C(7) (as added: see note 2 supra).

10 Ibid s 297C(6)(a) (as added: see note 2 supra). As to magistrates' courts see MAGISTRATES; and as to the Crown Court see COURTS vol 10 (Reissue) PARA 621 et seq.

11 Ibid s 297C(8) (as added: see note 2 supra).

12 Ie under ibid s 298 (as substituted): see PARA 495 post.

13 Ibid s 297C(9) (as added: see note 2 supra).

UPDATE

494 Forfeiture of unauthorised decoders

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 2--'Relevant offence' also means an offence under the Business Protection from Misleading Marketing Regulations 2008, SI 2008/1276, or the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277: Copyright, Designs and Patents Act 1988 s 297C(2) (amended by SI 2008/1277).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/4. CIRCUMVENTION OF PROTECTION MEASURES ETC/(2) FRAUDULENT RECEPTION OF TRANSMISSIONS/495. Rights and remedies in respect of apparatus etc for unauthorised reception of transmissions.

495. Rights and remedies in respect of apparatus etc for unauthorised reception of transmissions.

A person who:

- 145 (1) makes charges for the reception of programmes¹ included in a broadcasting² service provided from a place in the United Kingdom³ or any other member state⁴;
- 146 (2) sends encrypted⁵ transmissions⁶ of any other description from a place in the United Kingdom or any other member state⁷; or
- 147 (3) provides conditional access services⁸ from a place in the United Kingdom or any other member state⁹,

is entitled to the following rights and remedies¹⁰.

He has the same rights and remedies against a person who:

- 148 (a) makes, imports¹¹, distributes, sells¹² or lets for hire, offers or exposes for sale¹³ or hire, advertises for sale or hire¹⁴, has in his possession for commercial purposes¹⁵, or installs, maintains or replaces for commercial purposes¹⁶, any apparatus designed or adapted to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so¹⁷; or
- 149 (b) publishes or otherwise promotes by means of commercial communications any information which is calculated to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so¹⁸,

as a copyright owner¹⁹ has in respect of an infringement of copyright²⁰.

He also has the same rights²¹ as to delivery up or seizure of certain articles in relation to any such apparatus as a copyright owner has in relation to an infringing copy²².

1 As to references to programmes see PARA 89 note 5 ante; definition applied by the Copyright, Designs and Patents Act 1988 s 299(5) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(3)).

2 For the meaning of 'broadcasting' see PARA 89 ante; definition applied by the Copyright, Designs and Patents Act 1988 s 299(5) (as amended: see note 1 supra).

3 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

4 Copyright, Designs and Patents Act 1988 s 298(1)(a) (s 298 substituted by the Conditional Access (Unauthorised Decoders) Regulations 2000, SI 2000/1175, reg 2(1), (3)). For the meaning of 'member state' see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1. Where the Copyright, Designs and Patents Act 1988 s 298 (as substituted) applies in relation to a broadcasting service, it also applies to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both: s 299(4) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).

5 For the meaning of 'encrypted' see PARA 492 note 4 ante; definition applied by the Copyright, Designs and Patents Act 1988 s 298(7) (as substituted: see note 4 supra).

6 'Transmission' includes transmissions as defined in *ibid* s 297A (as added, substituted and amended) (see PARA 492 note 4 ante): s 298(7) (as substituted: see note 4 supra).

7 *Ibid* s 298(1)(b) (as substituted: see note 4 supra).

8 'Conditional access services' means services comprising the provision of conditional access technology: *ibid* s 298(7) (as substituted: see note 4 supra). For the meaning of 'conditional access technology' see PARA 492 note 4 ante; definition applied by s 298(7) (as so substituted).

9 *Ibid* s 298(1)(c) (as substituted: see note 4 supra).

10 *Ibid* s 298(1) (as substituted: see note 4 supra). As to the power to provide that the Copyright, Designs and Patents Act 1988 s 298 (as substituted) is to extend to the Isle of Man or any of the Channel Islands, or apply in relation to programmes included in services provided from a country or territory outside the United Kingdom, see PARA 496 post. Section 298 (as substituted) applies in relation to programmes included in broadcasting services and to encrypted transmissions of any other description provided or sent from a place in the Bailiwick of Guernsey: *Fraudulent Reception of Transmissions* (Guernsey) Order 1989, SI 1989/2003, art 2.

11 As to the meaning of 'import' see PARA 329 note 4 ante.

12 As to the meaning of 'sell' see PARA 330 note 6 ante.

13 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7-8 ante.

14 Copyright, Designs and Patents Act 1988 s 298(2)(a)(i) (as substituted: see note 4 supra).

15 *Ibid* s 298(2)(a)(ii) (as substituted: see note 4 supra).

16 *Ibid* s 298(2)(a)(iii) (as substituted: see note 4 supra).

17 *Ibid* s 298(2)(a) (as substituted: see note 4 supra).

18 *Ibid* s 298(2)(b) (as substituted: see note 4 supra).

19 As to who is the owner of the copyright in a work see PARA 118 et seq ante.

20 Copyright, Designs and Patents Act 1988 s 298(2) (as substituted: see note 4 supra). As to infringement of copyright see PARA 311 et seq ante. See also *BBC Enterprises Ltd v Hi-Tech Xtravision Ltd* [1991] 2 AC 327, [1991] 3 All ER 257, HL (decided under the Copyright, Designs and Patents Act 1988 s 298 as originally enacted).

The Supreme Court Act 1981 s 72 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property: see PARA 435 ante) applies to proceedings under the Copyright, Designs and Patents Act 1988 s 298 (as substituted) as to proceedings under Pt I (ss 1-179) (as amended) (copyright): s 298(4) (as so substituted).

In s 97(1) (innocent infringement of copyright: see PARA 407 ante) as it applies to proceedings for infringement of the rights conferred by s 298 (as substituted), the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work must be construed as a reference to his not knowing or having reason to believe that his acts infringed the rights conferred by s 298 (as substituted): s 298(5) (as so substituted). As to the meaning of 'know or have reason to believe' see PARA 334 ante.

21 *Ie* under *ibid* s 99 (see PARA 420 ante) or s 100 (see PARA 421 ante).

22 *Ibid* s 298(3) (as substituted: see note 4 supra). Section 114 (see PARA 422 ante) applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of s 298(3) (as substituted): s 298(6) (as so substituted).

UPDATE

495 Rights and remedies in respect of apparatus etc for unauthorised reception of transmissions

NOTE 20--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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496. Power to extend provisions relating to fraudulent reception of transmissions.

Her Majesty may by Order in Council¹ direct that the provisions relating to the fraudulent reception of transmissions² are to extend to the Isle of Man or any of the Channel Islands, with such exceptions and modifications as may be specified in the order³.

Her Majesty may by Order in Council provide that the offence of fraudulently receiving programmes⁴ is to apply in relation to programmes included in services provided from a country or territory outside the United Kingdom⁵, and that the rights and remedies in respect of apparatus etc used for the unauthorised reception of transmissions⁶ are to apply in relation to such programmes and to encrypted transmissions⁷ sent from such a country or territory⁸. A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament⁹.

1 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

2 I.e. the Copyright, Designs and Patents Act 1988 ss 297-299 (as amended, added and substituted): see PARA 491 et seq ante.

3 Ibid s 304(4)(d), (5). Any power conferred by the Copyright, Designs and Patents Act 1988 to make provision by Order in Council for or in connection with the extent of provisions of that Act to a country outside the United Kingdom includes power to extend to that country, subject to any modifications specified in the order, any provision of that Act which amends or repeals an enactment extending to that country: s 304(6). For the meaning of 'country' see PARA 59 note 4 ante; and for the meaning of 'United Kingdom' see PARA 3 note 1 ante.

4 I.e. ibid s 297 (as amended): see PARA 491 ante. As to references to a programme see PARA 89 note 5 ante; definition applied by s 299(5) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(3)).

5 Copyright, Designs and Patents Act 1988 s 299(1)(a). See the Fraudulent Reception of Transmissions (Guernsey) Order 1989, SI 1989/2003, art 2; and PARA 491 note 5 ante.

6 I.e. the Copyright, Designs and Patents Act 1988 s 298 (as substituted): see PARA 495 ante.

7 For the meanings of 'encrypted' see PARA 492 note 4 ante; and for the meaning of 'transmission' see PARA 495 note 6 ante.

8 Copyright, Designs and Patents Act 1988 s 299(1)(b). See the Fraudulent Reception of Transmissions (Guernsey) Order 1989, SI 1989/2003, art 2; and PARA 495 note 10 ante.

9 Copyright, Designs and Patents Act 1988 s 299(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/5. PUBLICATION RIGHT/497. Publication right.

5. PUBLICATION RIGHT

497. Publication right.

A person who on or after 1 December 1996¹ and after the expiry of copyright² protection publishes for the first time a previously unpublished work³ has a property right, known as 'publication right', equivalent to copyright⁴, provided that the work qualifies for protection⁵.

For this purpose, publication includes any making available to the public, in particular⁶:

- 150 (1) the issue of copies to the public⁷;
- 151 (2) making the work available by means of an electronic⁸ retrieval system⁹;
- 152 (3) the rental or lending¹⁰ of copies of the work to the public¹¹;
- 153 (4) the performance¹², exhibition or showing of the work in public¹³; or
- 154 (5) communicating the work to the public¹⁴.

No account is, however, to be taken for this purpose of any unauthorised¹⁵ act¹⁶.

No publication right arises from the publication of a work in which Crown copyright¹⁷ or Parliamentary copyright¹⁸ subsisted¹⁹.

1 le the date on which the Copyright and Related Rights Regulations 1996, SI 1996/2967, came into force: see reg 1(2).

2 Expressions used in ibid reg 16, other than 'publication', have the same meaning as in the Copyright, Designs and Patents Act 1988 Pt I (s 1-179) (as amended): Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(8). For the meaning of 'copyright' see PARA 57 ante. As to the duration of copyright see PARA 93 et seq ante.

3 'Work' means a literary, dramatic, musical or artistic work or a film: ibid reg 16(7). For the meaning of 'literary work' see PARA 67 ante; for the meanings of 'dramatic work' and 'musical work' see PARA 73 ante; for the meaning of 'artistic work' see PARA 75 ante; and for the meaning of 'film' see PARA 86 ante.

4 Ibid reg 16(1). The Regulations make provision for the purpose of implementing the provisions of EC Council Directive 93/98 (OJ L290, 24.11.93, p 9) harmonising the term of protection of copyright and certain related rights: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 3(c).

5 As to qualification for publication right see PARA 498 post.

6 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(2) (amended by SI 2003/2498).

7 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(2)(a). As to references to the issue to the public of copies of a work see PARA 322 ante.

8 For the meaning of 'electronic' see PARA 184 note 2 ante.

9 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(2)(b).

10 For the meanings of 'rental' and 'lending' see PARA 323 ante.

11 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(2)(c).

12 For the meaning of 'performance' see PARA 324 ante.

13 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(2)(d).

14 Ibid reg 16(2)(e) (substituted by SI 2003/2498). For the meaning of 'communication to the public' see PARA 326 ante.

15 For the meaning of 'unauthorised' see PARA 63 note 30 ante.

16 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(3). In relation to a time when there is no copyright in the work, an unauthorised act means an act done without the consent of the owner of the physical medium in which the work is embodied or on which it is recorded: reg 16(3).

17 For the meaning of 'Crown copyright' see PARA 144 ante.

18 For the meaning of 'Parliamentary copyright' see PARA 150 ante.

19 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(5).

UPDATE

497 Publication right

NOTE 4--Directive 93/98 repealed and replaced: European Parliament and EC Council Directive 2006/116 (OJ L372, 27.12.2006, p 12).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/5. PUBLICATION RIGHT/498. Qualification for publication right.

498. Qualification for publication right.

A work¹ qualifies for publication right² protection only if:

- 155 (1) first publication³ is in the European Economic Area (the 'EEA')⁴; and
- 156 (2) the publisher of the work is at the time of first publication a national of an EEA state⁵.

Where two or more persons jointly publish the work, it is sufficient for the purposes of head (2) above if any of them is a national of an EEA state⁶.

1 For the meaning of 'work' see PARA 497 note 3 ante.

2 For the meaning of 'publication right' see PARA 497 ante.

3 For the meaning of 'publication' see PARA 497 ante.

4 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(4)(a). The European Economic Area is that established by the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183).

5 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(4)(b). 'EEA state' means a member state, Iceland, Liechtenstein or Norway: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 2 (definition substituted by SI 2006/1028). For the meaning of 'member state' see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.

6 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/5. PUBLICATION RIGHT/499. Duration of publication right.

499. Duration of publication right.

Publication right¹ expires at the end of the period of 25 years from the end of the calendar year in which the work² was first published³.

1 For the meaning of 'publication right' see PARA 497 ante.

2 For the meaning of 'work' see PARA 497 note 3 ante.

3 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(6). For the meaning of 'publication' see PARA 497 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/5. PUBLICATION RIGHT/500. Application of copyright provisions to publication right.

500. Application of copyright provisions to publication right.

Publication right¹ is equivalent to copyright²; and the substantive provisions of Part I of the Copyright, Designs and Patents Act 1988 relating to copyright³ (but not those relating to moral rights in copyright works⁴), that is the relevant provisions in respect of:

- 157 (1) the rights of the copyright owner⁵;
- 158 (2) acts permitted in relation to copyright works⁶;
- 159 (3) dealings with rights in copyright works⁷;
- 160 (4) remedies for infringement⁸; and
- 161 (5) copyright licensing⁹,

apply in relation to publication right as in relation to copyright, subject to the specified exceptions and modifications¹⁰.

The other provisions of Part I of the Copyright, Designs and Patents Act 1988, that is:

- 162 (a) provisions defining expressions used generally¹¹;
- 163 (b) provisions relating to the Copyright Tribunal¹²;
- 164 (c) provisions relating to territorial waters and the continental shelf¹³ and to British ships, aircraft and hovercraft¹⁴; and
- 165 (d) the savings for other rules of law etc¹⁵ and the general interpretation provisions¹⁶,

apply, with any necessary adaptations, for the purposes of supplementing the substantive provisions of Part I of the Copyright, Designs and Patents Act 1988 as applied by the above provisions¹⁷.

Except where the context otherwise requires, any other enactment¹⁸ relating to copyright¹⁹ applies in relation to publication right as in relation to copyright²⁰.

1 For the meaning of 'publication right' see PARA 497 ante.

2 See the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 16(1); and PARA 497 ante.

3 Ie the Copyright, Designs and Patents Act 1988 Pt I (s 1-179) (as amended).

4 As to moral rights see ibid Pt I Ch IV (s 77-89) (as amended), ss 94, 95; and PARA 455 et seq ante.

5 Ie ibid Pt I Ch II (s 16-27) (as amended): see PARA 311 et seq ante.

6 Ie ibid Pt I Ch III (s 28-76) (as amended): see PARA 337 et seq ante. Section 57 (as amended) (see PARA 384 ante), s 64 (see PARA 391 ante), s 66A (as added) (see PARA 394 ante) and s 67 (as amended) (see PARA 395 ante) do not apply: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(a).

7 Ie the Copyright, Designs and Patents Act 1988 ss 90-93C (as amended): see PARA 158 et seq ante.

8 Ie ibid Pt I Ch VI (s 96-115) (as amended): see PARA 410 et seq ante. Sections 104-106 (as amended) (see PARAS 431-433 ante) do not apply: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(b). The Copyright, Designs and Patents Act 1988 s 107 (see PARA 437 ante) has effect with the modification that in s 107(4), (5) the maximum punishment on summary conviction is imprisonment for a term not exceeding three

months or a fine not exceeding level 5 on the standard scale, or both: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(3)(a). As to the standard scale see PARA 437 note 33 ante.

In proceedings brought with respect to a work by virtue of the Copyright, Designs and Patents Act 1988 Pt I Ch VI (as amended), as applied to publication right by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17, where copies of the work as issued to the public bear a statement that a named person was the owner of publication right in the work at the date of issue of the copies, the statement is admissible as evidence of the fact stated and must be presumed to be correct until the contrary is proved: reg 17A (regs 17A, 17B both added by SI 2006/1028). The Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17A (as added) does not apply to proceedings for an offence under the Copyright, Designs and Patents Act 1988 s 107 as applied and modified by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17 in relation to publication right; but this is without prejudice to its application in proceedings for an order under the Copyright, Designs and Patents Act 1988 s 108 (see PARA 440 ante) as that provision applies to publication right by virtue of the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17: reg 17B (as so added).

9 Ie the Copyright, Designs and Patents Act 1988 Pt I Ch VII (s 116-144) (as amended): see PARA 182 et seq ante. Section 116(4) (see PARA 224 ante) does not apply: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(2)(c). The Copyright, Designs and Patents Act 1988 s 116 (see PARA 224 ante), s 117 (as substituted and amended) (see PARA 223 ante) and s 124 (as substituted and amended) (see PARA 253 ante) have effect with the modifications that in s 116(2), s 117 (as substituted and amended) and s 124 (as substituted and amended) for 'works of more than one author' the words 'works of more than one publisher' are to be substituted: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(3)(b).

10 Ibid reg 17(1). As to the exceptions and modifications see notes 6, 8, 9 supra; and the text to notes 11-17 infra.

11 Ie in the Copyright, Designs and Patents Act 1988 Pt I Ch I (s 1-15) (as amended): see PARA 57 et seq ante.

12 Ie ibid Pt I Ch VIII (s 145-152) (as amended): see PARA 207 et seq post.

13 Ie ibid s 161: see PARA 443 ante.

14 Ie ibid s 162 (as amended): see PARA 443 ante.

15 Ie ibid s 171(1), (3): see PARA 57 ante.

16 Ie ibid ss 172-179 (as amended).

17 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(4).

18 For these purposes, 'enactment' includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARA 1232): Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 17(5).

19 Ie whether passed or made before or after 1 December 1986 (ie the date on which the Copyright and Related Rights Regulations 1996, SI 1996/2967, came into force: see reg 1(2)).

20 Ibid reg 17(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(i) In general/501. Meaning of 'design right'.

6. DESIGN RIGHT

(1) DESIGN RIGHT IN ORIGINAL DESIGNS

(i) In general

501. Meaning of 'design right'.

Design right is a property right which subsists¹ in an original design², including semiconductor topographies³. Design right can exist independently of and, where appropriate, in addition to copyright⁴ and registered designs⁵. In contrast to the latter, design right is sometimes referred to as 'unregistered design right'. In order for design right to subsist:

- 166 (1) the design must be original⁶;
- 167 (2) the design must not belong to certain categories excluded from design right protection⁷;
- 168 (3) the design must have been recorded in a design document⁸ or an article must have been made to the design⁹; and
- 169 (4) the design must qualify for design right protection¹⁰.

1 le in accordance with the Copyright, Designs and Patents Act 1988 Pt III (ss 213-264) (as amended).

2 Ibid s 213(1). For the meaning of 'design' see PARA 505 post.

3 le by virtue of the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100 (amended by SI 1989/2147; SI 1990/1003; SI 1991/2237; SI 1992/400; SI 1993/2497): see PARA 590 et seq post.

4 As to copyright see PARA 54 et seq ante.

5 As to registered designs see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 681 et seq.

6 See the Copyright, Designs and Patents Act 1988 s 213(1); and the text to notes 1-2 supra. See also PARAS 506-507 post.

7 le excluded by ibid s 213(3), (5A) (as added): see PARA 509 post.

8 'Design document' means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise: ibid s 263(1).

9 See ibid s 213(6); and PARA 508 post.

10 See ibid s 213(5); and PARA 510 et seq post.

UPDATE

501 Meaning of 'design right'

NOTE 3--SI 1989/1100 further amended: SI 2006/1833, SI 2008/1434. SI 1989/2147, SI 1990/1003, SI 1991/2237, SI 1992/400, SI 1993/2497 revoked: SI 2006/1833.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(i) In general/502. Territorial extent of design right protection.

502. Territorial extent of design right protection.

The statutory provisions relating to design right¹ extend to England and Wales, Scotland and Northern Ireland². For these purposes, the territorial waters of the United Kingdom³ are to be treated as part of the United Kingdom⁴. The statutory provisions also apply to things done in the United Kingdom sector of the continental shelf⁵ on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as they apply to things done in the United Kingdom⁶.

Her Majesty may by Order in Council⁷ direct that the statutory provisions extend, subject to such exceptions and modifications as may be specified in the order, to any of the Channel Islands⁸, the Isle of Man⁹ or any colony¹⁰. The legislature of a country¹¹ to which the provisions have been extended may modify or add to those provisions, in their operation as part of the law of that country, as the legislature may consider necessary to adapt the provisions to the circumstances of that country, but not so as to deny design right protection in a case where it would otherwise exist¹². Where a country to which the provisions extend ceases to be a colony of the United Kingdom, it continues to be treated as such a country for the purposes of the statutory provisions until an Order in Council is made¹³ designating it as a country enjoying reciprocal protection¹⁴, or an Order in Council is made declaring that it is to cease to be so treated by reason of the fact that those provisions as part of the law of that country have been amended or repealed¹⁵.

1 The Copyright, Designs and Patents Act 1988 Pt III (ss 213-264) (as amended). For the meaning of 'design right' see PARA 501 ante.

2 Ibid s 255(1). For the meanings of 'England' and 'Wales' see PARA 3 note 1 ante.

3 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

4 Copyright, Designs and Patents Act 1988 s 257(1). As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 123 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 31.

5 'The United Kingdom sector of the continental shelf' means the area designated by order under the Continental Shelf Act 1964 s 1(7) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1636); Copyright, Designs and Patents Act 1988 s 257(3).

6 Ibid s 257(2).

7 This power includes power to extend, subject to such exceptions and modifications as may be specified in the order, any Order in Council made under ibid s 221 (see PARA 516 post) or s 256 (see PARA 503 post): s 255(3). At the date at which this volume states the law no Order in Council had been made under s 255(2). As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

8 Ibid s 255(2)(a).

9 Ibid s 255(2)(b).

10 Ibid s 255(2)(c). For the meaning of 'colony' see PARA 3 note 7 ante.

11 'Country' includes any territory: ibid s 263(1).

12 Ibid s 255(4).

13 Ie under ibid s 256: see PARA 503 post.

14 Ibid s 255(5)(a).

15 Ibid s 255(5)(b). A statutory instrument containing an Order in Council under s 255(5)(b) is subject to annulment in pursuance of a resolution of either House of Parliament: s 255(6).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(i) In general/503. Countries enjoying reciprocal protection.

503. Countries enjoying reciprocal protection.

Her Majesty may, if it appears that the law of a country¹ provides adequate protection for British designs², by Order in Council designate that country as one enjoying reciprocal protection under the statutory provisions³ relating to design right⁴. If the law of a country provides adequate protection only for certain classes of British design, or only for designs applied to certain classes of article, any order designating that country must contain provision limiting, to a corresponding extent, the protection afforded by the statutory provisions in relation to designs connected with that country⁵.

An order under these provisions is subject to annulment in pursuance of a resolution of either House of Parliament⁶.

1 For the meaning of 'country' see PARA 502 note 11 ante.

2 'British design' means a design which qualifies for design right protection by reason of a connection with the United Kingdom of the designer or the person by whom the design is commissioned or the designer is employed: Copyright, Designs and Patents Act 1988 s 263(1). For the meaning of 'design' see PARA 505 post; and for the meaning of 'design right' see PARA 501 ante. For the meaning of 'United Kingdom' see PARA 3 note 1 ante. As to qualification by reference to the designer see PARA 513 post; and as to qualification by reference to the commissioner or employer see PARA 514 post.

3 Ie *ibid* Pt III (ss 213-264) (as amended).

4 *Ibid* s 256(1). The Design Right (Reciprocal Protection) (No 2) Order 1989, SI 1989/1294, has been made. As to the effect of war on an Order in Council made under the Copyright, Designs and Patents Act 1988 s 256 see PARA 504 post.

5 *Ibid* s 256(2).

6 *Ibid* s 256(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(i) In general/504. Effect of war on international design right.

504. Effect of war on international design right.

When Her Majesty is at war with a country in respect of which there was in force immediately before the commencement of the war an Order in Council providing for the reciprocal protection of foreign designs¹, then, unless and until the order is revoked, it is deemed to continue in force, notwithstanding the state of war, subject to any alteration or variation².

¹ I.e. an Order in Council made under the Copyright, Designs and Patents Act 1988 s 256: see PARA 503 ante.

² Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 5(1) (amended by the Copyright, Designs and Patents Act 1988 s 303(1), Sch 7 para 3(1), (4)(a)). As to the subsistence of design right in such a case despite ownership of the design right by an enemy and the operation of the Trading with the Enemy Act 1939 in relation thereto see the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 5(2) (as amended), which applies equally to design right as to copyright; and PARA 33 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(ii) Subsistence of Design Right/505. Meaning of 'design'.

(ii) Subsistence of Design Right

505. Meaning of 'design'.

'Design' means the design of any aspect¹ of the shape or configuration², whether internal or external, of the whole or part of an article³. Design right⁴ protects both aesthetic and functional designs. What is protected is the design itself rather than the substrate on which it is recorded or to which it is applied⁵. This means that the protection afforded by design right is not necessarily restricted to those features which qualify for protection⁶ only when they are applied to particular articles⁷. A design may comprise a shape defined by detailed dimensions, even though the eye may not be able to distinguish one such shape from another⁸. Design right can subsist in aspects of detail as they are capable of being 'aspects of part of an article'⁹.

'Article' is not defined and it has been held not to exclude animate things such as parts of the human body¹⁰.

The provisions relating to design right¹¹ apply in relation to a kit, that is a complete or substantially complete set of components intended to be assembled into an article, as they apply in relation to the assembled article¹²; but this does not affect the question whether design right subsists in any aspect of the design of the component of a kit as opposed to the design of the assembled article¹³.

1 'Aspect' means 'discernible' or 'recognisable': *A Fulton Co Ltd v Totes Isotoner (UK) Ltd* [2003] EWCA Civ 1514, [2004] RPC 301, [2003] All ER (D) 33 (Nov); *Dyson Ltd v Qualtex (UK) Ltd* [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar).

2 'Shape or configuration' has the same meaning as in relation to registered designs under the Registered Designs Act 1949 (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 742): *Lambretta Clothing Co Ltd v Teddy Smith (UK) Ltd* [2004] EWCA Civ 886, [2005] IP & T 609, [2005] RPC 88. Merely colouring an article in a novel way does not amount to 'shape or configuration': *Lambretta Clothing Co Ltd v Teddy Smith (UK) Ltd* supra (colourways of a standard track top).

3 Copyright, Designs and Patents Act 1988 s 213(2). This definition is extremely wide; it means that a particular article may and generally will embody a multitude of 'designs': *Dyson Ltd v Qualtex (UK) Ltd* [2006] EWCA Civ 166 at [22], [2006] All ER (D) 101 (Mar) at [22] per Jacob LJ. See *Farmers Build Ltd v Carrier Bulk Materials Handling Ltd* [1999] RPC 461, [2000] IP & T 49, CA (definition of 'design' wide enough to include the shape or configuration of the individual parts of a agricultural rotary screen slurry separator and the machine as a whole; the individual parts, combinations of parts and the parts made up into a whole machine were all 'articles' with a shape and a configuration); *Ultraframe (UK) Ltd v Eurocell Building Plastics Ltd* [2005] EWCA Civ 761, [2006] IP & T 222, [2005] RPC 894 (design right in both complete conservatory assembly and individual connecting parts); *A Fulton Co Ltd v Totes Isotoner (UK) Ltd* [2003] EWCA Civ 1514, [2004] RPC 301, [2003] All ER (D) 33 (Nov) (cloth cases for portable folding umbrellas); *A Fulton Co Ltd v Grant Barnett & Co* [2001] IP & T 244, [2001] RPC 257, [2000] All ER (D) 1270 (handle and case of compact folding umbrellas). It is immaterial whether the article is three-dimensional or two-dimensional; there is no reason why a 'design' should not subsist in what people would ordinarily call a 'flat' or 'two-dimensional' thing: *Lambretta Clothing Co Ltd v Teddy Smith (UK) Ltd* [2004] EWCA Civ 886, [2005] IP & T 609, [2005] RPC 88. There is no reason why a simple geometric shape can not be protected by design right, subject to arguments as to originality and whether the shape is commonplace. Similarly a crude drawing of such a shape is capable of qualifying for protection: *Sales v Stromberg* [2005] EWHC 1624 (Ch), [2005] All ER (D) 368 (Jul). As to originality and the meaning of 'commonplace' see PARAS 506-507 post.

In design right cases it is important for the claimant to identify as precisely as possible what he claims to be his original design. The burden is on the claimant to identify: (1) the relevant aspects of the shape and configuration of the article; and (2) what is original about the design. The evidential burden shifts to the defendant to allege and to adduce evidence showing that, although a design is original in the sense that the

designer originated it, it is commonplace in the field in question. But the legal burden remains on the claimant throughout: *Farmers Build Ltd v Carier Bulk Materials Handling Ltd* supra per Mummery LJ. See also *Dyson Ltd v Qualtex (UK) Ltd* [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar) (in which detailed guidance was given as to the management of design right cases); *Guild v Eskandar Ltd* [2002] EWCA Civ 316, [2003] FSR 23, [2002] All ER (D) 202 (Mar).

4 For the meaning of 'design right' see PARA 501 ante.

5 *Electronic Techniques (Anglia) Ltd v Critchley Components Ltd* [1997] FSR 401 at 418.

6 See PARA 510 et seq post.

7 *Electronic Techniques (Anglia) Ltd v Critchley Components Ltd* [1997] FSR 401 at 418 (giving as an example that a design for the handle of a spoon could be infringed by being applied to the handle of a fork).

8 *Ocular Sciences Ltd v Aspect Vision Care Ltd, Geoffrey Harrison Galley v Ocular Sciences Ltd* [1997] RPC 289 at 422-423.

9 *Dyson Ltd v Qualtex (UK) Ltd* [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar).

10 *Ocular Sciences Ltd v Aspect Vision Care Ltd, Geoffrey Harrison Galley v Ocular Sciences Ltd* [1997] RPC 289 at 425 (where it was held obiter that the human eye could be regarded as an article for the purpose of the 'must fit' exclusion: see PARA 509 post). See also the cases cited in note 3 supra.

11 Ie the Copyright, Designs and Patents Act 1988 Pt III (ss 213-264) (as amended).

12 Ibid s 260(1).

13 Ibid s 260(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(ii) Subsistence of Design Right/506. Requirement of originality.

506. Requirement of originality.

Design right¹ subsists only in an original design². The term 'original' is not defined in the Copyright, Designs and Patents Act 1988 but the test is the same as in copyright law, that is to say, the design must be the product of the independent skill, labour and work of its designer³. In deciding whether an article is original, a court should compare the design of the article in which design right is claimed with the design of other articles in the same field, including the alleged infringing article, as at the time of its creation; and if it is satisfied that the design for which protection is claimed has not simply been copied (for example, like a photocopy) from the design of an earlier article, then it is 'original'⁴. A design is not, however, original if it is commonplace in the design field in question at the time of its creation⁵.

The 'designer', in relation to a design, means the person who creates it⁶. In the case of a computer-generated⁷ design the person by whom the arrangements necessary for the creation of the design are undertaken is to be taken to be the designer⁸.

1 For the meaning of 'design right' see PARA 501 ante.

2 See the Copyright, Designs and Patents Act 1988 s 213(1); and PARA 501 ante. For the meaning of 'design' see PARA 505 ante.

3 *C & H Engineering v F Klucznik & Sons Ltd* [1992] FSR 421; *Farmers Build Ltd v Carier Bulk Materials Handling Ltd* [1999] RPC 461, [2000] IP & T 49, CA; *Dyson Ltd v Qualtex (UK) Ltd* [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar). See also *Guild v Eskandar* [2002] EWCA Civ 316, [2003] FSR 23, [2002] All ER (D) 202 (Mar); *Sales v Stromberg* [2005] EWHC 1624 (Ch), [2005] All ER (D) 368 (Jul). As to the requirement of originality in copyright see PARA 65 ante.

4 *Farmers Build Ltd v Carier Bulk Materials Handling Ltd* [1999] RPC 461, [2000] IP & T 49, CA. See also *Scholes Windows Ltd v Magnet Ltd* [2001] EWCA Civ 561, [2001] IP & T 870, [2001] All ER (D) 134 (Apr).

5 Copyright, Designs and Patents Act 1988 s 213(4). For the meaning of 'commonplace in the design field in question' see PARA 507 post.

6 *Ibid* s 214(1).

7 'Computer-generated', in relation to a design, means that the design is generated by computer in circumstances such that there is no human designer: *ibid* s 263(1).

8 *Ibid* s 214(2). As to references to the designer in relation to a joint design see PARA 517 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(ii) Subsistence of Design Right/507. Meaning of 'commonplace in the design field in question'.

507. Meaning of 'commonplace in the design field in question'.

A design¹ is not original² if it is commonplace in the design field in question at the time of its creation³.

The term 'commonplace' is not defined in the Copyright, Designs and Patents Act 1988, but it has been held that it does not impose a requirement of novelty; all that is required is that the design must in some respects be different from other designs, so that it can be fairly and reasonably described as not commonplace⁴. The approach to be adopted by a court when deciding whether a design is commonplace is as follows:

- 170 (1) The court must first satisfy itself that the design is original.
- 171 (2) If it is satisfied that the design is original, it must then ascertain how similar that design is to the design of similar articles in the same field of design made by persons other than the parties or persons unconnected with the parties.
- 172 (3) This comparative exercise must be conducted objectively and in the light of the evidence, including evidence from experts in the relevant field pointing out the similarities and the differences, and explaining the significance of them. The judgment to be reached by the court is one of fact and degree according to the evidence in each particular case. The closer the similarity of the various designs to each other, the more likely it is that the designs are commonplace, especially if there is no causal link, such as copying, which accounts for the resemblance of the compared designs. If a number of designers⁵ working independently of one another in the same field produce very similar designs by coincidence the most likely explanation of the similarities is that there is only one way of designing that article, and in those circumstances the design in question can fairly and reasonably be described as 'commonplace'.
- 173 (4) If, however, there are aspects of the claimant's design of the article which are not to be found in any other design in the field in question, and those aspects are found in the defendant's design, the court would be entitled to conclude that the design in question was not commonplace. That would be so, even though the design in question would not begin to satisfy any requirement of novelty⁶ in the Registered Designs Act 1949⁷.

Where a design can be broken down into a number of separate features, each of which may be commonplace, it does not follow that the design as a whole will necessarily be commonplace as the combination of those features may confer the necessary originality⁸.

The expression 'the design field in question' is also not defined in the Copyright, Designs and Patents Act 1988. In interpreting this expression a reasonably broad approach is called for and what matters are the sort of designs with which a notional designer of the article concerned would be familiar⁹. The expression is not limited to the nature or purpose of the article itself or the material structure of the article; and it does not exclude from consideration existing designs, which were first produced at an earlier time than the design under consideration, if they can be fairly and reasonably regarded as included in the design field in question at the time of the creation of that design¹⁰.

1 For the meaning of 'design' see PARA 505 ante.

2 As to originality see PARA 506 ante.

3 See the Copyright, Designs and Patents Act 1988 s 213(4); and PARA 506 ante.

4 *Farmers Build Ltd v Carier Bulk Materials Handling Ltd* [1999] RPC 461, [2000] IP & T 49, CA.

5 For the meaning of 'designer' see PARA 506 ante.

6 As to the requirement of novelty under the Registered Designs Act 1949 see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 748.

7 *Farmers Build Ltd v Carier Bulk Materials Handling Ltd* [1999] RPC 461, [2000] IP & T 49, CA. See also *Spraymiser Ltd v Wrightway Marketing Ltd* [2000] IP & T 263, [1999] All ER (D) 1481; *Round Imports v PLM Redfearn Ltd* (11 January 1999, unreported) (affd [2000] IP & T 1456, [2000] All ER (D) 1286, CA).

There can be no question of a very good design which becomes very well known losing design right by reason of becoming well-known. If, at the time of its creation, such a design was not commonplace, what happens after its creation can not affect the subsistence of the right. However, an aspect of a variant of the original design which was only different from the original in a commonplace manner would not be protected by way of any further design right: *Dyson Ltd v Qualtex (UK) Ltd* [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar).

8 *Ocular Sciences Ltd v Aspect Vision Care Ltd, Geoffrey Harrison Galley v Ocular Sciences Ltd* [1997] RPC 289 at 429-430. See also *Farmers Build Ltd v Carier Bulk Materials Handling Ltd* [1999] RPC 461, [2000] IP & T 49, CA; *Novum (Overseas) Ltd v Iceland Foods plc* [2002] EWHC 53 (Ch), [2002] All ER (D) 276 (Jan).

9 *Ultraframe (UK) Ltd v Eurocell Building Plastics Ltd* [2005] EWCA Civ 761, [2006] IP & T 222, [2005] RPC 894.

10 *Scholes Windows Ltd v Magnet Ltd* [2001] EWCA Civ 561, [2001] IP & T 870, [2001] All ER (D) 134 (Apr).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(ii) Subsistence of Design Right/508. Record in a design document or article.

508. Record in a design document or article.

Design right¹ does not subsist unless and until the design² has been recorded in a design document³ or an article has been made to the design⁴. Design right does not subsist in a design which was so recorded, or to which an article was made, before 1 August 1989⁵.

1 For the meaning of 'design right' see PARA 501 ante.

2 For the meaning of 'design' see PARA 505 ante.

3 For the meaning of 'design document' see PARA 501 note 8 ante.

4 Copyright, Designs and Patents Act 1988 s 213(6).

5 Ibid s 213(7). The date mentioned in the text is the date of the commencement of Pt III (ss 213-264) (as amended): see PARA 54 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(ii) Subsistence of Design Right/509. Exclusions from design right.

509. Exclusions from design right.

Design right¹ does not subsist in:

- 174 (1) a method or principle of construction²;
- 175 (2) features of shape or configuration³ of an article which:
- 581
 - 16. (a) enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function⁴; or
 - 17. (b) are dependent upon the appearance of another article of which the article is intended by the designer⁵ to form an integral⁶ part⁷;
- 582
- 176 (3) surface decoration⁸; or
- 177 (4) a design⁹ which consists of or contains a controlled representation¹⁰.

A feature which meets the interface criteria in head (2)(a) above is excluded even if it performs some other purpose such as being decorative¹¹. Further, if a number of designs are possible each of which meets the interface criteria, each falls within the statutory exclusion¹². The interface exclusion may also apply where two interfitting articles carrying the features are assembled together to form the whole, or part of, a larger article¹³.

1 For the meaning of 'design right' see PARA 501 ante.

2 Copyright, Designs and Patents Act 1988 s 213(3)(a). A method or principle of construction is a process or operation by which a shape is produced as opposed to the shape itself: *A Fulton Co Ltd v Grant Barnett & Co* [2001] IP & T 244, [2001] RPC 257, [2000] All ER (D) 1270, applying *Kestos Ltd v Kempat Ltd* (1935) 53 RPC 139 (registered design). See also *Parker v Tidball* [1997] FSR 680 at 696 (stitching with the seams turned in; a method of construction).

3 As to the meaning of 'shape or configuration' see PARA 505 note 2 ante.

4 Copyright, Designs and Patents Act 1988 s 213(3)(b)(i). This is known as the 'must fit' or 'interface' exclusion. See eg *Ocular Sciences Ltd v Aspect Vision Care Ltd*, *Geoffrey Harrison Galley v Ocular Sciences Ltd* [1997] RPC 289 at 425-428 (certain features of contact lenses, eg the back radius and lens diameter, excluded from protection because their shape and configuration enabled the contact lens to fit onto the human eye so that both the eye and the lens could perform their respective functions); *Parker v Tidball* [1997] FSR 680 (certain features of carrier cases for mobile telephones excluded from protection); *A Fulton Co Ltd v Grant Barnett & Co* [2001] IP & T 244, [2001] RPC 257, [2000] All ER (D) 1270 (exclusion did not apply to case designed to contain the folded umbrella; unacceptable to construe the exclusion as meaning that any article which is shaped so as to cover or contain another article cannot qualify for design right); *Dyson Ltd v Qualtex (UK) Ltd* [2004] EWHC 2981 (Ch), [2005] RPC 395, [2005] IP & T 656 (affd [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar)) (parts for vacuum cleaners).

5 For the meaning of 'designer' see PARA 506 ante.

6 The word 'integral' is present so as not to exclude from registrability items which do not stand alone but which do not form part of a whole article such as cups and saucers, knives and forks: *Ford Motor Co Ltd and Iveco Fiat SpA's Design Applications* [1993] RPC 399, Registered Design Appeal Tribunal; affd sub nom *Ford Motor Co Ltd's Design Applications* [1994] RPC 545, DC; [1995] RPC 167, HL (registered design). See PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 747.

7 Copyright, Designs and Patents Act 1988 s 213(3)(b)(ii). This is known as the 'must match' exclusion. The test is whether there is dependency of the kind, or to the extent, which would make the overall article in

question (article 2) radically different in appearance if article 1 were not the shape it is: *Dyson Ltd v Qualtex (UK) Ltd* [2004] EWHC 2981 (Ch), [2005] RPC 395, [2005] IP & T 656; affd [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar). See also *A Fulton Co Ltd v Grant Barnett & Co* [2001] IP & T 244, [2001] RPC 257, [2000] All ER (D) 1270; *Ford Motor Co Ltd and Iveco Fiat SpA's Design Applications* [1993] RPC 399, Registered Design Appeal Tribunal (affd sub nom *Ford Motor Co Ltd's Design Applications* [1994] RPC 545, DC; [1995] RPC 167, HL) (registered design). See PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 747.

8 Copyright, Designs and Patents Act 1988 s 213(3)(c). 'Surface decoration' must cover both the case where a surface is covered with a thin layer and where the decoration runs throughout the article: *Lambretta Clothing Co Ltd v Teddy Smith (UK) Ltd* [2004] EWCA Civ 886, [2005] IP & T 609, [2005] RPC 88 (colourways of a standard track top). The exclusion is not limited to three dimensional shapes only: *Dyson Ltd v Qualtex (UK) Ltd* [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar). Surface features which have a significant function do not qualify as 'surface decoration': *Dyson Ltd v Qualtex (UK) Ltd* supra (ribbed handle of vacuum cleaner having function of providing grip not surface decoration); *Hi Tech Autoparts Ltd v Towergate Two Ltd (No 2)* [2002] FSR 16 (projections on a car floor mat not surface decoration being functional features giving non-slip properties). See also *Mark Wilkinson Furniture Ltd v Woodcraft Designs (Radcliffe) Ltd* [1998] FSR 63 (beading and grooves in fitted kitchen units held to be surface decoration); *A Fulton Co Ltd v Grant Barnett & Co* [2001] IP & T 244, [2001] RPC 257, [2000] All ER (D) 1270 (outward facing seams on edges and at corners of umbrella case a significant part of the design of the case and not surface decoration).

9 For the meaning of 'design' see PARA 505 ante.

10 Copyright, Designs and Patents Act 1988 s 213(5A) (added by the Olympic Symbol etc (Protection) Act 1995 s 14). 'Controlled representation' has the meaning given by the Olympic Symbol etc (Protection) Act 1995 (see TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 493): Copyright, Designs and Patents Act 1988 s 213(5A) (as so added). Section 213(5A) (as added) has effect in relation to designs created on or after 20 September 1995 only: Olympic Symbol etc (Protection) Act 1995 ss 14(2), 19(2); Olympic Symbol etc (Protection) Act 1995 (Commencement) Order 1995, SI 1995/2472, art 2. For the purposes of the Olympic Symbol etc (Protection) Act 1995 s 14(2), a design is created on the first day on which it is recorded on a design document or an article is made to it: s 14(3).

11 *Ocular Sciences Ltd v Aspect Vision Care Ltd, Geoffrey Harrison Galley v Ocular Sciences Ltd* [1997] RPC 289 at 424 per Laddie J.

12 *Ocular Sciences Ltd v Aspect Vision Care Ltd, Geoffrey Harrison Galley v Ocular Sciences Ltd* [1997] RPC 289 at 424 per Laddie J.

13 *Electronic Techniques (Anglia) Ltd v Critchley Components Ltd* [1997] FSR 401 at 418 (refusal to strike out defence that the interface exclusion applied to those parts of an electric transformer which, when fitted together, formed the whole transformer).

UPDATE

509 Exclusions from design right

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--See also *Landor & Hawa International Ltd v Azure Designs Ltd* [2006] EWCA Civ 1285, [2007] FSR 181 (expander section of suitcases not a method of principle or construction).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(iii) Qualification for Design Right Protection/510. Qualification for design right protection.

(iii) Qualification for Design Right Protection

510. Qualification for design right protection.

Design right¹ subsists in a design² only if the design qualifies for design right protection by reference to:

- 178 (1) the designer³ or the person⁴ by whom the design was commissioned⁵ or the designer was employed⁶; or
- 179 (2) the person by whom and country⁷ in which⁸ articles made to the design were first marketed⁹,

or in accordance with any order made¹⁰ under Her Majesty's general power to make further provision with respect to qualification¹¹. The criteria for qualification are mutually exclusive¹².

1 For the meaning of 'design right' see PARA 501 ante.

2 For the meaning of 'design' see PARA 505 ante.

3 See the Copyright, Designs and Patents Act 1988 s 218; and PARA 513 post. For the meaning of 'designer' see PARA 506 ante.

4 See *ibid* s 219; and PARA 514 post.

5 'Commission' means a commission for money or money's worth: *ibid* s 263(1).

6 *Ibid* s 213(5)(a). 'Employee', 'employer' and 'employment' refer to employment under a contract of service or of apprenticeship: s 263(1). As to contracts of service and of apprenticeship see EMPLOYMENT vol 39 (2009) PARAS 4, 9.

7 For the meaning of 'country' see PARA 502 note 11 ante.

8 See the Copyright, Designs and Patents Act 1988 s 220; and PARA 515 post.

9 *Ibid* s 213(5)(b).

10 *Ie* under *ibid* s 221: see PARA 516 post.

11 *Ibid* s 213(5).

12 See *ibid* ss 218-220; and PARAS 513-515 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(iii) Qualification for Design Right Protection/511. Meanings of 'qualifying individual' and 'qualifying person'.

511. Meanings of 'qualifying individual' and 'qualifying person'.

'Qualifying individual' means a citizen or subject of, or an individual habitually resident¹ in, a qualifying country²; and 'qualifying person' means a qualifying individual or a body corporate or other body having legal personality which is formed under the law of a part of the United Kingdom or another qualifying country³ and has in any qualifying country a place of business⁴ at which substantial business activity is carried on⁵. In determining for the purposes of the definition of 'qualifying person' whether substantial business activity is carried on at a place of business in any country, no account is to be taken of dealings in goods which are at all material times outside that country⁶. References to a qualifying person include the Crown⁷ and the government of any other qualifying country⁸.

1 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

2 Copyright, Designs and Patents Act 1988 s 217(1). For the meaning of 'qualifying country' see PARA 512 post. The reference in the definition of 'qualifying individual' to a person's being a citizen or subject of a qualifying country is to be construed: (1) in relation to the United Kingdom, as a reference to his being a British citizen; and (2) in relation to a colony of the United Kingdom, as a reference to his being a British overseas territories' citizen by connection with that colony: s 217(4) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). For the meaning of 'United Kingdom' see PARA 3 note 1 ante; and for the meaning of 'colony' see PARA 3 note 7 ante. For the meaning of 'British citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq; and for the meaning of 'British overseas territories citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 44 et seq.

3 Copyright, Designs and Patents Act 1988 s 217(1)(a).

4 'Business' includes a trade or profession: *ibid* s 263(1).

5 *Ibid* s 217(1)(b).

6 *Ibid* s 217(5).

7 'The Crown' includes the Crown in right of Her Majesty's government in Northern Ireland and the Crown in right of the Scottish Administration: *ibid* s 263(1) (definition amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 93(1), (4)(a)).

8 Copyright, Designs and Patents Act 1988 s 217(2).

UPDATE

511 Meanings of 'qualifying individual' and 'qualifying person'

NOTE 7--'The Crown' also includes the Crown in the right of the Welsh Assembly Government: 1988 Act s 263(1) (amended by the Government of Wales Act 2006 Sch 10 para 31).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(iii) Qualification for Design Right Protection/512. Meaning of 'qualifying country'.

512. Meaning of 'qualifying country'.

'Qualifying country' means:

- 180 (1) the United Kingdom¹;
- 181 (2) a country² to which³ the provisions relating to design right⁴ extend⁵;
- 182 (3) another member state of the European Union⁶; or
- 183 (4) a country designated⁷ as enjoying reciprocal protection⁸.

1 Copyright, Designs and Patents Act 1988 s 217(3)(a). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

2 For the meaning of 'country' see PARA 502 note 11 ante.

3 Ie by virtue of an Order under the Copyright, Designs and Patents Act 1988 s 255: see PARA 502 ante.

4 Ie ibid Pt III (ss 213-264) (as amended). For the meaning of 'design right' see PARA 501 ante.

5 Ibid s 217(3)(b).

6 Ibid s 217(3)(c).

7 Ie under ibid s 256 (see PARA 503 ante) and to the extent that an Order in Council thereunder so provides.

8 Ibid s 217(3)(d).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(iii) Qualification for Design Right Protection/513. Qualification by reference to designer.

513. Qualification by reference to designer.

A design¹ which is not created in pursuance of a commission² or in the course of employment³ qualifies for design right⁴ protection if the designer⁵ is a qualifying individual⁶ or, in the case of a computer-generated⁷ design, a qualifying person⁸.

A joint design⁹ which is not created in pursuance of a commission or in the course of employment qualifies for design right protection if any of the designers is a qualifying individual or, as the case may be, a qualifying person¹⁰.

1 For the meaning of 'design' see PARA 505 ante.

2 For the meaning of 'commission' see PARA 510 note 5 ante.

3 Copyright, Designs and Patents Act 1988 s 218(1). For the meaning of 'employment' see PARA 510 note 6 ante.

4 For the meaning of 'design right' see PARA 501 ante.

5 For the meaning of 'designer' see PARA 506 ante.

6 For the meaning of 'qualifying individual' see PARA 511 ante.

7 For the meaning of 'computer-generated' see PARA 506 note 7 ante.

8 Copyright, Designs and Patents Act 1988 s 218(2). For the meaning of 'qualifying person' see PARA 511 ante. The right of a designer to claim in a member state of the European Union the protection afforded by the law of that state may not be subject to a distinguishing criterion based on the country of origin of the work: Case C-28/04 *Tod's SpA v Heyraud SA* [2006] All ER (EC) 34, [2005] All ER (D) 376 (Jun), ECJ.

9 For the meaning of 'joint design' see PARA 517 post.

10 Copyright, Designs and Patents Act 1988 s 218(1), (3). Where a joint design qualifies for design right protection under these provisions, only those designers who are qualifying individuals or qualifying persons are entitled to design right under s 215(1) (first ownership of design right and entitlement of designer: see PARA 518 post): s 218(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(iii) Qualification for Design Right Protection/514. Qualification by reference to commissioner or employer.

514. Qualification by reference to commissioner or employer.

A design¹ qualifies for design right² protection if it is created in pursuance of a commission³ from, or in the course of employment⁴ with, a qualifying person⁵.

In the case of a joint commission or joint employment a design qualifies for design right protection if any of the commissioners or employers⁶ is a qualifying person⁷.

1 For the meaning of 'design' see PARA 505 ante.

2 For the meaning of 'design right' see PARA 501 ante.

3 For the meaning of 'commission' see PARA 510 note 5 ante.

4 For the meaning of 'employment' see PARA 510 note 6 ante.

5 Copyright, Designs and Patents Act 1988 s 219(1). For the meaning of 'qualifying person' see PARA 511 ante. See *Spraymiser Ltd v Wrightway Marketing Ltd* [2000] IP & T 263, [1999] All ER (D) 1481.

6 For the meaning of 'employer' see PARA 510 note 6 ante.

7 Copyright, Designs and Patents Act 1988 s 219(2). Where a design which is jointly commissioned or created in the course of joint employment qualifies for design right protection under these provisions, only those commissioners or employers who are qualifying persons are entitled to design right under s 215(2) or (3) (first ownership of design right and entitlement of commissioner or employer: see PARA 518 post): s 219(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(iii) Qualification for Design Right Protection/515. Qualification by reference to first marketing.

515. Qualification by reference to first marketing.

A design¹ which does not otherwise qualify for design right² protection by reference to the designer³ or, as the case may be, the commissioner or employer⁴ qualifies for design right protection if the first marketing⁵ of articles made to the design:

- 184 (1) is by a qualifying person⁶ who is exclusively authorised⁷ to put such articles on the market in the United Kingdom⁸; and
- 185 (2) takes place in the United Kingdom, another country⁹ to which the provisions relating to design right extend¹⁰, or another member state of the European Union¹¹.

If the first marketing of articles made to the design is done jointly by two or more persons, the design qualifies for design right protection if any of those persons meets the requirements specified in head (1) above¹².

1 For the meaning of 'design' see PARA 505 ante.

2 For the meaning of 'design right' see PARA 501 ante.

3 Ie under the Copyright, Designs and Patents Act 1988 s 218: see PARA 513 ante. For the meaning of 'designer' see PARA 506 ante.

4 Ie under ibid s 219: see PARA 514 ante. For the meaning of 'commission' see PARA 510 note 5 ante; and for the meaning of 'employer' see PARA 510 note 6 ante.

5 References to 'marketing', in relation to an article, are references to its being sold or let for hire, or offered or exposed for sale or hire, in the course of a business, and related expressions are to be construed accordingly; but no account is to be taken of marketing which is merely colourable and not intended to satisfy the reasonable requirements of the public: ibid s 263(2). For the meaning of 'business' see PARA 511 note 4 ante.

6 For the meaning of 'qualifying person' see PARA 511 ante.

7 'Exclusively authorised' refers: (1) to authorisation by the person who would have been first owner of design right as designer, commissioner of the design or employer of the designer if he had been a qualifying person, or by a person lawfully claiming under such a person; and (2) to exclusivity capable of being enforced by legal proceedings in the United Kingdom: Copyright, Designs and Patents Act 1988 s 220(4). As to first ownership of design right see PARA 518 post. For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

8 Ibid s 220(1)(a).

9 For the meaning of 'country' see PARA 502 note 11 ante.

10 Ie by virtue of an order under the Copyright, Designs and Patents Act 1988 s 255: see PARA 502 ante.

11 Ibid s 220(1)(b).

12 Ibid s 220(2). In such a case only the persons who meet those requirements are entitled to design right under s 215(4) (first ownership of design right and entitlement of first marketer of articles made to the design: see PARA 518 post): s 220(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(iii) Qualification for Design Right Protection/516. Power to make further provision as to qualification.

516. Power to make further provision as to qualification.

Her Majesty may, with a view to fulfilling an international obligation of the United Kingdom¹, by Order in Council² provide that a design³ qualifies for design right⁴ protection if such requirements as are specified in the order are met⁵. An order may make different provision for different descriptions of design or article; and may make such consequential modifications of the operation of the provisions relating to ownership of design right⁶ and other means of qualification⁷ as appear to Her Majesty to be appropriate⁸.

A statutory instrument containing such an Order in Council is subject annulment in pursuance of a resolution of either House of Parliament⁹.

1 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

2 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

3 For the meaning of 'design' see PARA 505 ante.

4 For the meaning of 'design right' see PARA 501 ante.

5 Copyright, Designs and Patents Act 1988 s 221(1). At the date at which this volume states the law no such Order in Council had been made.

6 *Ie* *ibid* s 215: see PARA 518 post.

7 *Ie* *ibid* ss 218-220: see PARAS 513-515 ante.

8 *Ibid* s 221(2).

9 *Ibid* s 221(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(iii) Qualification for Design Right Protection/517. Joint designs.

517. Joint designs.

'Joint design' means a design¹ produced by the collaboration of two or more designers² in which the contribution of each is not distinct from that of the other or others³. References⁴ to the designer of a design are to be construed, except as otherwise provided⁵, in relation to a joint design, as references to all the designers of the design⁶.

- 1 For the meaning of 'design' see PARA 505 ante.
- 2 For the meaning of 'designer' see PARA 506 ante.
- 3 Copyright, Designs and Patents Act 1988 s 259(1).
- 4 Ie in *ibid* Pt III (ss 213-264) (as amended).
- 5 See *ibid* s 218(4); and PARA 518 post.
- 6 *Ibid* s 259(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(iv) Ownership of Design Right/518. Ownership of design right.

(iv) Ownership of Design Right

518. Ownership of design right.

The designer¹ is the first owner of any design right² in a design³ which is not created in pursuance of a commission⁴ or in the course of employment⁵. Where a design is created in pursuance of a commission, the person commissioning the design is the first owner of any design right in it⁶. Where, in the case of a design not created in pursuance of a commission, a design is created by an employee⁷ in the course of his employment, his employer⁸ is the first owner of any design right in the design⁹.

If a design qualifies for design right protection by reference to the first marketing¹⁰ of articles made to the design, the above rules do not apply and the person by whom the articles in question are marketed is the first owner of the design right¹¹.

Where a joint design¹² qualifies for design right protection by reference to the qualifying status of the designer¹³, only those designers who are qualifying individuals¹⁴ or qualifying persons¹⁵ are entitled¹⁶ to design right¹⁷. Where a design which is jointly commissioned or created in the course of joint employment qualifies for design right protection by reference to the qualifying status of the commissioner or the employer, as the case may be¹⁸, only those commissioners or employers who are qualifying persons are entitled¹⁹ to design right²⁰. Where a design which has been jointly marketed qualifies for design right protection by reference to the status of the first marketer of articles made to the design²¹, only the persons who meet the specified requirements²² are entitled²³ to design right²⁴.

Where different persons are, whether in consequence of a partial assignment²⁵ or otherwise, entitled to different aspects of design right in a work, the design right owner is²⁶ the person who is entitled to the right in the respect relevant for that purpose²⁷. Where design right, or any aspect of design right, is owned by more than one person jointly, references²⁸ to the design right owner are references to all the owners, so that in particular any requirement of the licence²⁹ of the design right owner requires the licence of all of them³⁰.

1 For the meaning of 'designer' see PARA 506 ante.

2 For the meaning of 'design right' see PARA 501 ante.

3 For the meaning of 'design' see PARA 505 ante.

4 For the meaning of 'commission' see PARA 510 note 5 ante.

5 Copyright, Designs and Patents Act 1988 s 215(1). For the meaning of 'employment' see PARA 510 note 6 ante. As to the power to modify s 215 see PARA 516 ante. As to dealings with design right see PARA 521 et seq post; and as to the determination of disputes relating to the identity of the person in whom design right first vested see PARA 560 et seq post.

6 Ibid s 215(2). See *Ultraframe (UK) Ltd v Fielding* [2003] EWCA Civ 1805, [2004] RPC 479, [2003] All ER (D) 232 (Dec) (no commission as director and 100% shareholder had placed himself under no obligation to produce designs for his companies).

7 For the meaning of 'employee' see PARA 510 note 6 ante.

8 For the meaning of 'employer' see PARA 510 note 6 ante.

- 9 Copyright, Designs and Patents Act 1988 s 215(3). See *Ultraframe (UK) Ltd v Fielding* [2003] EWCA Civ 1805, [2004] RPC 479, [2003] All ER (D) 232 (Dec) (director and 100% shareholder held not to be an employee).
- 10 Ie by virtue of the Copyright, Designs and Patents Act 1988 s 220: see PARA 515 ante. As to references to 'marketing' see PARA 515 note 5 ante.
- 11 Ibid s 215(4).
- 12 For the meaning of 'joint design' see PARA 517 ante.
- 13 Ie under the Copyright, Designs and Patents Act 1988 s 218: see PARA 513 ante.
- 14 For the meaning of 'qualifying individual' see PARA 511 ante.
- 15 For the meaning of 'qualifying person' see PARA 511 ante.
- 16 Ie under the Copyright, Designs and Patents Act 1988 s 215(1): see the text to notes 1-5 supra.
- 17 Ibid s 218(4).
- 18 Ie under ibid s 219: see PARA 514 ante.
- 19 Ie under ibid s 215(2) or (3): see the text to notes 6-9 supra.
- 20 Ibid s 219(3).
- 21 Ie under ibid s 220(2): see PARA 515 ante.
- 22 Ie the requirements in ibid s 220(1)(a): see PARA 515 ante.
- 23 Ie under ibid s 215(4): see the text to notes 10-11 supra.
- 24 Ibid s 220(3).
- 25 As to assignment of design right see PARA 522 post.
- 26 Ie for any purpose of the Copyright, Designs and Patents Act 1988 Pt III (ss 213-264) (as amended).
- 27 Ibid s 258(1).
- 28 Ie in ibid Pt III (as amended).
- 29 As to licences of design right see PARA 522 post.
- 30 Copyright, Designs and Patents Act 1988 s 258(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(iv) Ownership of Design Right/519. Equitable ownership.

519. Equitable ownership.

Ownership in equity can arise where the circumstances are such that the legal owner of the design right¹ can properly be regarded as holding it on trust for another².

1 As to who is the first owner of design right see PARA 518 ante.

2 As to the circumstances which apply in relation to copyright see PARA 122 ante. Similar considerations will apply in relation to design right. See also *Ultraframe (UK) Ltd v Fielding* [2003] EWCA Civ 1805, [2004] RPC 479, [2003] All ER (D) 232 (Dec) (a director and 100% shareholder held design rights in trust for various companies through whom he was operating his business at the time he created the design rights).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(v) Duration of Design Right/520. Duration of design right.

(v) Duration of Design Right

520. Duration of design right.

Design right¹ expires:

- 186 (1) 15 years from the end of the calendar year in which the design² was first recorded in a design document³ or an article was first made to the design, whichever first occurred⁴; or
- 187 (2) if articles made to the design are made available for sale or hire⁵ within five years from the end of that calendar year, ten years from the end of the calendar year in which that first occurred⁶.

1 For the meaning of 'design right' see PARA 501 ante.

2 For the meaning of 'design' see PARA 505 ante.

3 For the meaning of 'design document' see PARA 501 note 8 ante.

4 Copyright, Designs and Patents Act 1988 s 216(1)(a).

5 The reference to articles being made available for sale or hire is a reference to their being made so available anywhere in the world by or with the licence of the design right owner: *ibid* s 216(2). As to first ownership of design right see PARA 518 ante; and as to references to the licence of the design right owner see PARAS 518 ante, 522 note 10, 523 note 5 post. As to the position of an exclusive licensee see PARA 525 post. The first actual delivery of an article is when the article is 'made available for sale'; merely taking orders with future delivery is not enough: *Dyson Ltd v Qualtex (UK) Ltd* [2004] EWHC 2981 (Ch), [2005] RPC 395, [2005] IP & T 656; *affd* [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar).

6 Copyright, Designs and Patents Act 1988 s 216(1)(b). As to the determination of disputes as to the term of design right see PARA 560 et seq post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(vi) Dealings with Design Right/521. In general.

(vi) Dealings with Design Right

521. In general.

The provisions of the Copyright, Designs and Patents Act 1988 relating to assignment and licences of design right, prospective ownership and exclusive licences of design right are the same with necessary alterations as those relating to copyright¹.

¹ See PARA 158 et seq ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(vi) Dealings with Design Right/522. Assignment and licences.

522. Assignment and licences.

Design right¹ is transmissible by assignment, by testamentary disposition or by operation of law, as personal or movable property². An assignment or other transmission of design right may be partial³, that is, limited so as to apply:

- 188 (1) to one or more, but not all, of the things the design right owner⁴ has the exclusive right to do⁵;
- 189 (2) to part, but not the whole, of the period for which the right is to subsist⁶.

An assignment of design right is not effective unless it is in writing⁷ signed⁸ by or on behalf of the assignor⁹.

A licence granted by the owner of design right is binding on every successor in title to his interest in the right, except a purchaser in good faith for valuable consideration and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser¹⁰.

1 For the meaning of 'design right' see PARA 501 ante.

2 Copyright, Designs and Patents Act 1988 s 222(1).

3 As to the construction of references to the design right owner where there has been such an assignment see PARA 518 ante.

4 As to first ownership of design right see PARA 518 ante.

5 Copyright, Designs and Patents Act 1988 s 222(2)(a). As to the exclusive rights conferred on the design right owner see PARA 526 post.

6 Ibid s 222(2)(b). As to the duration of design right see PARA 520 ante.

7 'Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form; and expressions referring to writing are to be construed accordingly: Interpretation Act 1978 s 5, Sch 1.

8 The requirement that the assignment be signed by or on behalf of the assignor is also satisfied in the case of a body corporate by the affixing of its seal: Copyright, Designs and Patents Act 1988 s 261. As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

9 Copyright, Designs and Patents Act 1988 s 222(3).

10 Ibid s 222(4). References to doing anything with, or without, the licence of the design right owner are to be construed accordingly: s 222(4).

UPDATE

522 Assignment and licences

NOTE 8--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1): see COMPANIES vol 14 (2009) PARA 283.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(vi) Dealings with Design Right/523. Prospective ownership of design right.

523. Prospective ownership of design right.

Where by an agreement made in relation to future design right¹, and signed² by or on behalf of the prospective owner of the design right, the prospective owner purports to assign³ the future design right, wholly or partially, to another person, then if, on the right coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the right to be vested in him, the right vests in him without further assurance⁴.

A licence granted by a prospective owner of design right is binding on every successor in title to his interest, or prospective interest, in the right, except a purchaser in good faith for valuable consideration and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser⁵.

1 'Future design right' means design right which will or may come into existence in respect of a future design or class of designs or on the occurrence of a future event; and 'prospective owner' is to be construed accordingly, and includes a person who is prospectively entitled to design right by virtue of such an agreement as is mentioned in the Copyright, Designs and Patents Act 1988 s 223(1) (see the text and note 4 infra): s 223(2). For the meaning of 'design right' see PARA 501 ante; and for the meaning of 'design' see PARA 505 ante.

2 The requirement that the agreement be signed by or on behalf of the prospective owner is also satisfied in the case of a body corporate by the affixing of its seal: *ibid* s 261. As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

3 As to assignment generally see PARA 522 ante.

4 Copyright, Designs and Patents Act 1988 s 223(1).

5 *Ibid* s 223(3). References to doing anything with, or without, the licence of the design right owner are to be construed accordingly: s 223(3).

UPDATE

523 Prospective ownership of design right

NOTE 2--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1): see COMPANIES vol 14 (2009) PARA 283.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(vi) Dealings with Design Right/524. Assignment of right in registered design presumed to carry with it design right.

524. Assignment of right in registered design presumed to carry with it design right.

Where a design¹ consisting of a design in which design right² subsists is registered under the Registered Designs Act 1949³ and the proprietor of the registered design is also the design right owner⁴, an assignment of the right in the registered design is to be taken to be also an assignment of the design right, unless a contrary intention appears⁵. Similarly, where design right subsists in a registered design and the proprietor of the registered design is also the design right owner, an assignment of the design right is taken to be also an assignment of the right in the registered design, unless a contrary intention appears⁶.

1 For the meaning of 'design' see PARA 505 ante.

2 For the meaning of 'design right' see PARA 501 ante.

3 As to the Registered Designs Act 1949 generally see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 681 et seq; as to registration of assignments of registered designs see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 700; and as to assignment of registered designs see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 723.

4 As to who is the first owner of design right see PARA 518 ante.

5 Copyright, Designs and Patents Act 1988 s 224.

6 See the Registered Designs Act 1949 s 19(3B) (as added); and PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 700.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(vi) Dealings with Design Right/525. Exclusive licences.

525. Exclusive licences.

'Exclusive licence' means a licence¹ in writing² signed³ by or on behalf of the design right owner⁴ authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the design right owner⁵. The licensee under an exclusive licence has the same rights against any successor in title who is bound by the licence as he has against the person granting the licence⁶.

1 As to licences generally see PARA 522 ante.

2 For the meaning of 'writing' see PARA 522 note 7 ante.

3 The requirement that the licence be signed by or on behalf of the design right owner is also satisfied in the case of a body corporate by the affixing of its seal: Copyright, Designs and Patents Act 1988 s 261. As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

4 As to who is the first owner of design right see PARA 518 ante. For the meaning of 'design right' see PARA 501 ante.

5 Copyright, Designs and Patents Act 1988 s 225(1). As to the rights exclusively exercisable by the design right owner see PARA 526 post.

6 Ibid s 225(2).

UPDATE

525 Exclusive licences

NOTE 3--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1): see COMPANIES vol 14 (2009) PARA 283.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(vii) Rights of Design Right Owners; Remedies/A. INFRINGEMENT OF DESIGN RIGHT/526. Rights of design right owner.

(vii) Rights of Design Right Owners; Remedies

A. INFRINGEMENT OF DESIGN RIGHT

526. Rights of design right owner.

The owner of design right¹ in a design² has the exclusive right, subject to certain exceptions³, to reproduce the design for commercial purposes⁴ by making articles to that design or by making a design document⁵ recording the design for the purpose of enabling such articles to be made⁶. Reproduction of a design by making articles to the design means copying the design so as to produce articles exactly or substantially⁷ to that design⁸.

1 For the meaning of 'design right' see PARA 501 ante. As to who is the first owner of design right see PARA 518 ante.

2 For the meaning of 'design' see PARA 505 ante.

3 Copyright, Designs and Patents Act 1988 s 226(5). The exceptions are those set out in Pt III Ch III (ss 236-245) (as amended): see PARA 545 et seq post.

4 References to an act being done in relation to an article for 'commercial purposes' are references to its being done with a view to the article in question being sold or hired in the course of a business: *ibid* s 263(3). For the meaning of 'business' see PARA 511 note 4 ante.

5 For the meaning of 'design document' see PARA 501 note 8 ante.

6 Copyright, Designs and Patents Act 1988 s 226(1).

7 The test is different to that applicable to copyright works (as to which see the Copyright, Designs and Patents Act 1988 s 16(3)(a); and PARA 312 ante). In respect of design right, the test for infringement requires the alleged infringing article or articles be compared with the document or article embodying the design and the court must decide whether copying took place and, if so, whether the alleged infringing article is made exactly to the design or substantially to that design. This is an objective test to be decided through the eyes of the person to whom the design is directed, such as a customer: *C & H Engineering v F Klucznik & Sons Ltd* [1992] FSR 421 at 428; *Ocular Sciences Ltd v Aspect Vision Care Ltd*, *Geoffrey Harrison Galley v Ocular Sciences Ltd* [1997] RPC 289; *Parker v Tidball* [1997] FSR 680; *L Woolley Jewellers Ltd v A & A Jewellery Ltd* [2002] EWCA Civ 1119, (2002) Times, 4 October, [2002] All ER (D) 489 (Jul). See also *Baby Dan AS (formerly Baby Dan Production ApS) v Brevi Srl* [1999] FSR 377; *L Woolley Jewellers Ltd v A & A Jewellery Ltd (No 2)* [2003] EWCC (Des) 1, [2004] FSR 932; *Dyson Ltd v Qualtex (UK) Ltd* [2004] EWHC 2981 (Ch), [2005] RPC 395, [2005] IP & T 656 (affd [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar)).

8 Copyright, Designs and Patents Act 1988 s 226(2). References to making articles to a design are to be construed accordingly: s 226(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(vii) Rights of Design Right Owners; Remedies/A. INFRINGEMENT OF DESIGN RIGHT/527. Primary infringement.

527. Primary infringement.

Design right¹ is infringed, subject to certain exceptions², by a person who, without the licence of the design right owner³, does, or authorises⁴ another to do, anything which is the exclusive right of the design right owner⁵.

For these purposes, reproduction may be direct or indirect; and it is immaterial whether any intervening acts themselves infringe the design right⁶.

1 For the meaning of 'design right' see PARA 501 ante.

2 Copyright, Designs and Patents Act 1988 s 226(5). The exceptions are those set out in Pt III Ch III (ss 236-245) (as amended): see PARA 545 et seq post.

3 As to the licence of the design right owner see PARAS 518, 522 note 10, 523 note 5 ante. As to who is the first owner of design right see PARA 518 ante; and as to prospective ownership of design right see PARA 523 ante.

4 It is submitted that the term 'authorise' is likely to be construed in the same manner as in relation to copyright: see PARA 328 ante.

5 Copyright, Designs and Patents Act 1988 s 226(3). As to the rights exclusively exercisable by the design right owner see PARA 526 ante.

6 Ibid s 226(4). This is the same as for copyright: see PARA 314 et seq ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(vii) Rights of Design Right Owners; Remedies/A. INFRINGEMENT OF DESIGN RIGHT/528. Secondary infringement; importing or dealing with infringing article.

528. Secondary infringement; importing or dealing with infringing article.

Design right¹ is infringed, subject to certain exceptions², by a person who, without the licence of the design right owner³:

- 190 (1) imports⁴ into the United Kingdom⁵ for commercial purposes⁶; or
- 191 (2) has in his possession⁷ for commercial purposes⁸; or
- 192 (3) sells⁹, lets for hire, or offers or exposes for sale¹⁰ or hire, in the course of a business¹¹,

an article which is, and which he knows or has reason to believe¹² is, an infringing article¹³.

It is normal to notify the person importing or manufacturing the infringing articles of the existence of the design right and the owner's claim so that continued conduct after the expiry of a reasonable time within which to check the design right owner's claim will render the person notified a secondary infringer¹⁴. Care should, however, be taken to ensure that the notification does not amount to an unjustified threat of infringement proceedings¹⁵.

1 For the meaning of 'design right' see PARA 501 ante.

2 Copyright, Designs and Patents Act 1988 s 227(2). The exceptions are those set out in Pt III Ch III (ss 236-245) (as amended): see PARA 545 et seq post.

3 As to the licence of the design right owner see PARAS 518, 522 note 10, 523 note 5 ante. As to who is the first owner of design right see PARA 518 ante.

4 As to the meaning of 'import' see PARA 329 note 4 ante.

5 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

6 Copyright, Designs and Patents Act 1988 s 227(1)(a). For the meaning of 'commercial purposes' see PARA 526 note 4 ante.

7 As to the meaning of 'possession' see PARA 330 note 4 ante.

8 Copyright, Designs and Patents Act 1988 s 227(1)(b).

9 As to the meaning of 'sell' see PARA 330 note 6 ante. See also *Baby Dan AS (formerly Baby Dan Production ApS) v Brevi Srl* [1999] FSR 377.

10 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante.

11 Copyright, Designs and Patents Act 1988 s 227(1)(c). For the meaning of 'business' see PARA 511 note 4 ante.

12 As to the meaning of 'know or have reason to believe' see PARA 334 ante. See also *A Fulton Co Ltd v Grant Barnett & Co* [2001] IP & T 244, [2001] RPC 257, [2000] All ER (D) 1270 (in which it was said that these words mean knowledge or reason to believe, first, that the articles were made substantially to the designs of which the claimant owned the design rights, and, second, that they were copied from those designs); *Baby Dan AS (formerly Baby Dan Production ApS) v Brevi Srl* [1999] FSR 377.

13 Copyright, Designs and Patents Act 1988 s 227(1). For the meaning of 'infringing article' see PARA 529 post.

14 See *Van Dusen v Kritz* [1936] 2 KB 176 (copyright); and PARA 334 ante. See also *A Fulton Co Ltd v Grant Barnett & Co* [2001] IP & T 244, [2001] RPC 257, [2000] All ER (D) 1270 (in which it was held that knowledge of the infringement only arose after the claimant had set out the claim with sufficient particularity); *Baby Dan AS (formerly Baby Dan Production ApS) v Brevi Srl* [1999] FSR 377.

15 As to such threats see PARA 538 et seq post. The practice as to notice was developed under copyright law where there are no threats provisions, so the problem did not arise there. However, the mere notification that a design is protected by design right does not constitute a threat (see the Copyright, Designs and Patents Act 1988 s 253(4); and PARA 540 post); and it is a defence to a claim to show that the threat was justified, ie the design was infringed (see s 253(2); and PARA 538 post).

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529. Meaning of 'infringing article'.

'Infringing article', in relation to a design¹, is to be construed in accordance with the following provisions².

An article is an infringing article if its making to that design was an infringement of design right³ in the design⁴. An article is also an infringing article if:

- 193 (1) it has been or is proposed to be imported⁵ into the United Kingdom⁶; and
- 194 (2) its making to that design in the United Kingdom would have been an infringement of design right in the design or a breach of an exclusive licence⁷ agreement relating to the design⁸.

Where it is shown that an article is made to a design in which design right subsists or has subsisted at any time, it is to be presumed, until the contrary is proved, that the article was made at a time when design right subsisted⁹.

The expression 'infringing article' does not include a design document¹⁰, notwithstanding that its making was or would have been an infringement of design right¹¹.

1 For the meaning of 'design' see PARA 505 ante.

2 Copyright, Designs and Patents Act 1988 s 228(1).

3 For the meaning of 'design right' see PARA 501 ante.

4 Copyright, Designs and Patents Act 1988 s 228(2). As to the infringement of design right by making articles to a design see PARA 527 ante.

5 As to the meaning of 'import' see PARA 329 note 4 ante.

6 Copyright, Designs and Patents Act 1988 s 228(3)(a). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

7 For the meaning of 'exclusive licence' see PARA 525 ante.

8 Copyright, Designs and Patents Act 1988 s 228(3)(b). This is the same as the position in relation to copyright: see PARA 329 ante. Nothing in s 228(3) is, however, to be construed as applying to an article which may lawfully be imported into the United Kingdom by virtue of any enforceable Community right within the meaning of the European Communities Act 1972 s 2(1) (see PARA 335 note 9 ante): Copyright, Designs and Patents Act 1988 s 228(5).

9 Ibid s 228(4).

10 For the meaning of 'design document' see PARA 501 note 8 ante.

11 Copyright, Designs and Patents Act 1988 s 228(6).

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B. REMEDIES FOR INFRINGEMENT

530. Rights and remedies of design right owner.

An infringement of design right¹ is actionable, subject to the provisions² relating to innocent infringement³, by the design right owner⁴. In a claim for infringement of design right all such relief by way of damages, injunctions, accounts or otherwise is available to the claimant as is available in respect of the infringement of any other property right⁵. However, relief is limited in cases where the defendant undertakes to take a licence of right⁶.

In relation to a claim for infringement of design right, the court may, having regard to all the circumstances and in particular to the flagrancy of the infringement⁷ and any benefit accruing to the defendant by reason of the infringement⁸, award such additional damages as the justice of the case may require⁹.

1 For the meaning of 'design right' see PARA 501 ante.

2 Ie subject to the Copyright, Designs and Patents Act 1988 s 233: see PARA 533 post.

3 Ibid s 229(4).

4 Ibid s 229(1). As to who is the first owner of design right see PARA 518 ante.

5 Ibid s 229(2). As to relief in respect of infringement of copyright see PARA 410 et seq ante. A design right owner may lose his rights in respect of an infringement if it can be shown he acquiesced in the infringement: see *Farmers Build Ltd v Carier Bulk Materials Handling Ltd* [1999] RPC 461, [2000] IP & T 49, CA; *Dyson Ltd v Qualtex (UK) Ltd* [2004] EWHC 2981 (Ch), [2005] RPC 395, [2005] IP & T 656 (affd [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar)).

6 See the Copyright, Designs and Patents Act 1988 s 239; and PARA 551 post.

7 Ibid s 229(3)(a).

8 Ibid s 229(3)(b).

9 Ibid s 229(3). The additional damages are called 'additional statutory damages' or 'flagrancy damages'. See *Dyson Ltd v Qualtex (UK) Ltd* [2004] EWHC 2981 (Ch), [2005] RPC 395, [2005] IP & T 656; affd [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar). As to additional damages in relation to copyright see PARA 419 ante.

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531. Rights and remedies of exclusive licensee.

An exclusive licensee¹ has, except against the design right owner², the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment³. His rights and remedies are concurrent with those of the design right owner⁴.

In a claim brought by an exclusive licensee a defendant may avail himself of any defence which would have been available to him if the claim had been brought by the design right owner⁵.

1 'Exclusive licensee' is not defined, but for the meaning of 'exclusive licence' see PARA 525 ante.

2 As to who is the first owner of design right see PARA 518 ante. For the meaning of 'design right' see PARA 501 ante.

3 Copyright, Designs and Patents Act 1988 s 234(1). As to assignment of design right see PARA 522 ante.

4 Ibid s 234(2). References in the relevant provisions of Pt III (ss 213-264) (as amended) are to be construed accordingly: s 234(2). As to the exercise of concurrent rights see PARA 532 post.

5 Ibid s 234(3).

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532. Exercise of concurrent rights.

Where a claim for infringement of design right¹ brought by the design right owner² or an exclusive licensee³ relates, wholly or partly, to an infringement in respect of which they have concurrent rights of action⁴, the design right owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the claim unless the other is either joined as a claimant or added as a defendant⁵. A design right owner or exclusive licensee who is added as a defendant is not liable for any costs unless he takes part in the proceedings⁶. These provisions do not, however, affect the granting of interim relief on the application of the design right owner or an exclusive licensee⁷.

Where a claim for infringement of design right is brought which relates, wholly or partly, to an infringement in respect of which the design right owner and an exclusive licensee have concurrent rights of action:

- 195 (1) the court must, in assessing damages, take into account the terms of the licence⁸ and any pecuniary remedy already awarded or available to either of them in respect of the infringement⁹;
- 196 (2) no account of profits may be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement¹⁰; and
- 197 (3) the court must, if an account of profits is directed, apportion the profits between them as the court considers just, subject to any agreement between them¹¹,

and these provisions apply whether or not the design right owner and the exclusive licensee are both parties to the claim¹².

1 For the meaning of 'design right' see PARA 501 ante. As to infringement of design right see PARAS 527-528 ante.

2 As to who is the first owner of design right see PARA 518 ante.

3 'Exclusive licensee' is not defined, but for the meaning of 'exclusive licence' see PARA 525 ante.

4 As to such concurrent rights see PARA 531 ante.

5 Copyright, Designs and Patents Act 1988 s 235(1).

6 Ibid s 235(2).

7 Ibid s 235(3). As to interim relief see PARA 414 ante.

8 Ibid s 235(4)(a)(i).

9 Ibid s 235(4)(a)(ii).

10 Ibid s 235(4)(b). As to damages and accounts of profits see PARA 419 ante.

11 Ibid s 235(4)(c).

12 Ibid s 235(4).

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533. Innocent infringement.

Where, in a claim for primary infringement of design right¹, it is shown that at the time of the infringement the defendant did not know, and had no reason to believe², that design right subsisted³ in the design⁴ to which the claim relates, the claimant is not entitled to damages against him, but this is without prejudice to any other remedy⁵.

Where, in a claim for secondary infringement of design right⁶, a defendant shows that the infringing article⁷ was innocently acquired⁸ by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable royalty in respect of the act complained of⁹.

As against an innocent secondary infringer the design right owner's¹⁰ remedies are more restricted by this provision than those of a copyright owner. He cannot, for example, require delivery up or destruction of the infringing articles but is restricted to receiving a reasonable royalty. There is no statutory definition of 'reasonable royalty' but the court is well used in intellectual property cases to assessing such a royalty¹¹. It should be noted that the secondary infringer who is not innocent may rely on the innocence of predecessors in title. It is, therefore, important for the design right owner to give notice of his claim to as many as possible in the distribution chain¹², although he must avoid tortious threats¹³.

1 Ie under the Copyright, Designs and Patents Act 1988 s 226: see PARAS 526-527 ante. For the meaning of 'design right' see PARA 501 ante.

2 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

3 As to the subsistence of design right see PARA 501 ante.

4 For the meaning of 'design' see PARA 505 ante.

5 Copyright, Designs and Patents Act 1988 s 233(1). As to similar provision in respect of copyright see s 97(1); and PARA 407 ante.

6 Ie under *ibid* s 227: see PARA 528 ante.

7 For the meaning of 'infringing article' see PARA 529 ante.

8 'Innocently acquired' means that the person acquiring the article did not know and had no reason to believe that it was an infringing article: Copyright, Designs and Patents Act 1988 s 233(3).

9 *Ibid* s 233(2). If there is a serious issue to be tried, s 233(2) does not impose a statutory bar on the awarding of an interim injunction: *Badge Sales v PMS International Group Ltd* [2004] EWHC 3382 (Ch), [2004] All ER (D) 74 (Jun). As to interim injunctions see PARA 414 ante.

10 As to who is the first owner of design right see PARA 518 ante.

11 See eg *Meikle v Maufe* [1941] 3 All ER 144 (architect's copyright); *Stovin-Bradford v Volpoint Properties Ltd* [1971] Ch 1007, [1971] 3 All ER 570, CA (architect's copyright); *PB Cow Ltd v Cannon Rubber Manufacturers Ltd* [1961] RPC 236 (registered design); *General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd* [1975] 2 All ER 173, [1975] 1 WLR 819, HL (patents); *Gerber Garment Technology Inc v Lectra Systems Ltd* [1995] RPC 383 (affd in part [1997] RPC 443, CA) (patent).

12 An order seeking disclosure of suppliers and customers may be applied for: see *Norwich Pharmacal Co v Customs and Excise Comrs* [1974] AC 133, [1973] 2 All ER 943, HL; and see *Smith Kline and French*

Laboratories Ltd v Global Pharmaceuticals Ltd [1986] RPC 394, CA; *Jade Engineering (Coventry) Ltd v Antiference Window Systems Ltd* [1996] FSR 461.

13 In certain instances it is tortious to threaten proceedings for infringement of design right: see the Copyright, Designs and Patents Act 1988 s 253; and PARA 538 et seq post.

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534. Order for delivery up.

Where a person:

- 198 (1) has in his possession, custody or control for commercial purposes¹ an infringing article²; or
- 199 (2) has in his possession, custody or control anything specifically designed or adapted for making articles to a particular design³, knowing or having reason to believe⁴ that it has been or is to be used to make an infringing article⁵,

the owner of the design right⁶ in the design in question may apply to the court⁷ for an order that the infringing article or other thing be delivered up to him or to such other person as the court may direct⁸.

An application may not be made after the end of the period specified in the following provisions; and no order may be made unless the court also makes, or it appears to the court that there are grounds for making, an order⁹ as to the disposal of infringing articles etc¹⁰.

An application for an order may not be made after the end of the period of six years from the date on which the article or thing in question was made¹¹; but, if during the whole or any part of that period the design right owner is under a disability¹² or is prevented by fraud or concealment from discovering the facts entitling him to apply for an order¹³, an application may be made at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts¹⁴.

A person to whom an infringing article or other thing is delivered up in pursuance of an order under the above provisions must, if an order¹⁵ as to the disposal of infringing articles etc is not made, retain it pending the making of, or the decision not to make, such an order as to disposal¹⁶.

Nothing in the above provisions affects any other power of the court¹⁷.

The design right owner must notify any exclusive licensee¹⁸ having concurrent rights¹⁹ before applying for an order for delivery up under the above provisions; and the court may on the application of the licensee make such order under the above provisions as it thinks fit, having regard to the terms of the licence²⁰. There is no requirement that the design right owner be notified when the application for the order is made by an exclusive licensee²¹.

1 For the meaning of 'commercial purposes' see PARA 526 note 4 ante.

2 Copyright, Designs and Patents Act 1988 s 230(1)(a). For the meaning of 'infringing article' see PARA 529 ante.

3 For the meaning of 'design' see PARA 505 ante.

4 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

5 Copyright, Designs and Patents Act 1988 s 230(1)(b).

6 As to who is the first owner of design right see PARA 518 ante.

7 A county court may entertain proceedings for an order under the Copyright, Designs and Patents Act 1988 s 230 or, as the case may be, s 235(5) (see the text to notes 18-20 *infra*): s 232(1). A county court has jurisdiction under s 232 and s 235(5) whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings: High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(n). Nothing in the Copyright, Designs and Patents Act 1988 s 232 is, however, to be construed as affecting the jurisdiction of the High Court: s 232(3). As to county courts see COURTS vol 10 (Reissue) PARA 701 *et seq*; and as to the High Court see COURTS vol 10 (Reissue) PARA 602 *et seq*.

8 *Ibid* s 230(1). No order may be made where the defendant undertakes to take a licence of right: see s 239(1)(b); and PARA 551 *post*.

9 *Ie* an order under *ibid* s 231: see PARA 535 *post*.

10 *Ibid* s 230(2). For example, the court may not make such an order where the defendant is an innocent secondary infringer because in that case the design right owner's remedy is restricted to damages not exceeding a reasonable royalty: see s 233(2); and PARA 533 *ante*.

11 *Ibid* s 230(3).

12 *Ibid* s 230(4)(a). A person is to be treated as under a disability while he is an infant, or of unsound mind: Limitation Act 1980 s 38(2) (applied by the Copyright, Designs and Patents Act 1988 s 230(5)(a)). As from a day to be appointed, this provision is amended so as to provide that a person is to be treated as under a disability while he is an infant, or lacks capacity (within the meaning of the Mental Capacity Act 2005: see MENTAL HEALTH vol 30(2) (Reissue) PARA 641) to conduct legal proceedings: Limitation Act 1980 s 38(2) (prospectively amended by the Mental Capacity Act 2005 s 67(1), Sch 6 para 25(a)). At the date at which this volume states the law no such day had been appointed.

13 Copyright, Designs and Patents Act 1988 s 230(4)(b).

14 *Ibid* s 230(4).

15 *Ie* an order under *ibid* s 231: see PARA 535 *post*.

16 *Ibid* s 230(6).

17 *Ibid* s 230(7).

18 'Exclusive licensee' is not defined, but for the meaning of 'exclusive licence' see PARA 525 *ante*.

19 As to the rights and remedies of an exclusive licensee see PARA 531 *ante*; and as to the exercise of concurrent rights see PARA 532 *ante*.

20 Copyright, Designs and Patents Act 1988 s 235(5).

21 Provision is only made for notification by the design right owner: see *ibid* s 235(5); and the text to notes 18-20 *supra*.

UPDATE

534 Order for delivery up

NOTE 12--Day now appointed: SI 2007/1897.

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535. Order as to disposal of infringing articles etc.

An application may be made to the court¹ for an order that an infringing article² or other thing delivered up in pursuance of an order for delivery up³ must be forfeited to the design right owner⁴, or destroyed or otherwise dealt with as the court may think fit⁵, or for a decision that no such order should be made⁶.

In considering what order, if any, should be made, the court must consider whether other remedies available in a claim for infringement of design right⁷ would be adequate to compensate the design right owner and to protect his interests⁸. Where there is more than one person interested in an article or other thing⁹, the court must make such order as it thinks just and may, in particular, direct that the thing be sold, or otherwise dealt with, and the proceeds divided¹⁰. If the court decides that no order should be made under these provisions, the person in whose possession, custody or control the article or thing was before being delivered up is entitled to its return¹¹.

Provision must be made by rules of court¹² as to the service of notice on persons having an interest in the article or other thing, and any such person is entitled to appear in proceedings for an order under these provisions, whether or not he was served with notice¹³, and to appeal against any order made, whether or not he appeared¹⁴; and an order must not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal¹⁵.

1 A county court may entertain proceedings for an order under the Copyright, Designs and Patents Act 1988 s 231: s 232(1). A county court has jurisdiction under s 231 whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings: High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(n). Nothing in the Copyright, Designs and Patents Act 1988 s 232 is, however, to be construed as affecting the jurisdiction of the High Court: s 232(3). As to county courts see COURTS vol 10 (Reissue) PARA 701 et seq; and as to the High Court see COURTS vol 10 (Reissue) PARA 602 et seq.

2 For the meaning of 'infringing article' see PARA 529 ante.

3 I.e. an order under the Copyright, Designs and Patents Act 1988 s 230: see PARA 534 ante.

4 Ibid s 231(1)(a). As to who is the first owner of design right see PARA 518 ante. For the meaning of 'design right' see PARA 501 ante.

5 Ibid s 231(1)(b).

6 Ibid s 231(1).

7 As to infringement of design right and remedies in respect thereof see PARA 527 et seq ante.

8 Copyright, Designs and Patents Act 1988 s 231(2).

9 References to a person having an interest in an article or other thing include any person in whose favour an order could be made in respect of it: (1) under *ibid* s 231, or s 114 (see PARA 422 ante), or s 204 (see PARA 713 post); (2) under the Registered Designs Act 1949 s 24D (as added) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 767); (3) under the Trade Marks Act 1994 s 19 (including that provision as applied by the Community Trade Mark Regulations 2006, SI 2006/1027, reg 4) (see TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 463); or (4) under the Community Design Regulations 2005, SI 2005/2339, reg 1C (as added) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 779): Copyright, Designs and Patents Act 1988 s 231(6)

(amended by the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 2(2), Sch 2 para 14).

10 Copyright, Designs and Patents Act 1988 s 231(4).

11 Ibid s 231(5) (amended by the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 2(4), Sch 4).

12 As to the procedure see CPR 63 (as amended); and Practice Direction--Patents and other Intellectual Property Claims PD63 (as amended).

13 Copyright, Designs and Patents Act 1988 s 231(3)(a).

14 Ibid s 231(3)(b).

15 Ibid s 231(3).

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536. Infringement claim.

Claims for infringement of design right¹ must be brought in the Chancery Division of the High Court², a patents county court³ or a county court where there is also a Chancery district registry⁴. Interim injunctions are available in accordance with general principles⁵. The proceedings are in general similar to those for infringement of copyright⁶.

In intellectual property proceedings a person is not entitled to refuse to answer questions or give disclosure on the ground that to do so might tend to incriminate him, his spouse or civil partner⁷. With certain exceptions, the information supplied may not be used against the defendant, his spouse or civil partner in criminal proceedings for a related offence⁸.

1 For the meaning of 'design right' see PARA 501 ante. As to infringement of design right see PARA 526 et seq ante.

2 As to the High Court see COURTS vol 10 (Reissue) PARA 602 et seq.

3 The Central London County Court is the only designated Patent County Court: see the Patents County Court (Designation and Jurisdiction) Order 1994, SI 1994/1609, art 2; and PARA 588 post.

4 CPR 63.1, 13; Practice Direction--Patents and other Intellectual Property Claims PD63 para 18.1. There are Chancery district registries at Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle upon Tyne: para 18.2.

5 As to interim injunctions see PARA 414 ante.

6 As to such proceedings see PARA 410 et seq ante.

7 See the Supreme Court Act 1981 s 72(1), (2) (s 72(1) amended by the Civil Partnership Act 2004 s 261(1), Sch 27 para 69(1), (2)). As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 ss 59(5), 148(1), Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed. As to the privilege against incrimination of self or spouse see CIVIL PROCEDURE vol 11 (2009) PARA 580.

8 See the Supreme Court Act 1981 s 72(3), (4) (s 72(3) amended by the Civil Partnership Act 2004 Sch 27 para 69(1), (3)). See note 7 supra. See also *Crest Homes plc v Marks* [1987] AC 829, [1987] 2 All ER 1074, HL; *Cobra Golf Ltd v Rata* [1998] Ch 109, [1997] 2 All ER 150, sub nom *Cobra Golf Inc and Cobra Golf Ltd v Rata (No 2)* [1997] FSR 317.

UPDATE

536 Infringement claim

NOTE 4--CPR Pt 63 substituted: SI 2009/2092.

NOTE 7--Appointed day is 1 October 2009: SI 2009/1604.

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537. Claims against the Crown.

Civil proceedings lie against the Crown for an infringement of design right committed by a servant or agent¹ of the Crown with the authority of the Crown²; but otherwise no proceedings lie against the Crown by virtue of the Crown Proceedings Act 1947 in respect of an infringement of design right³.

1 'Agent' includes an independent contractor employed by the Crown: Crown Proceedings Act 1947 s 38(2).

2 Ibid s 3(1)(d) (s 3(1) substituted by the Copyright, Designs and Patents Act 1988 s 303(1), Sch 7 para 4(1)).

3 Crown Proceedings Act 1947 s 3(1) (as substituted: see note 2 supra).

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C. CLAIMS FOR THREATS

538. Proceedings for groundless threats.

Where a person threatens¹ another person with proceedings for infringement of design right², a person aggrieved³ by the threats⁴ may bring a claim against him⁵. Proceedings may not be so brought in respect of a threat to bring proceedings for an infringement alleged to consist of making or importing⁶ anything⁷.

If the claimant proves that the threats were made and that he is a person aggrieved by them, he is entitled to the relief claimed⁸ unless the defendant shows that the acts in respect of which proceedings were threatened did constitute, or if done would have constituted, an infringement of the design right concerned⁹.

The commencement by the defendant of infringement proceedings is not of itself a bar to the claimant's claim¹⁰.

1 To circulate threats by others is not to threaten, but may nevertheless be restrained by injunction: see *Ellam v HF Martyn & Co* (1898) 68 LJ Ch 123, 16 RPC 28, CA (patent).

2 For the meaning of 'design right' see PARA 501 ante. As to infringement of design right see PARAS 527-528 ante; and as to infringement proceedings see PARA 530 ante.

3 'Aggrieved' means whether the threat was such as to be likely to cause damage: *Reymes-Cole v Elite Hosiery Co Ltd* [1965] RPC 102 at 111, CA (patents). Whether a person is aggrieved by the threats is a question of fact: *Reymes-Cole v Elite Hosiery Co Ltd* supra; *Brain v Ingledew Brown Bennison & Garrett (a firm)* [1996] FSR 341 at 350, CA; *Brain v Ingledew Brown Bennison and Garrett (a firm) (No 3)* [1997] FSR 511 (director a person aggrieved by threat made to his company). See also PARA 540 post.

4 As to what constitutes a threat see PARA 540 post.

5 Copyright, Designs and Patents Act 1988 s 253(1). The law relating to proceedings for groundless threats was developed under the Patents Act 1977 s 70 (and its statutory predecessors) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 557 et seq) and under the Registered Designs Act 1949 s 26(3) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 772).

6 As to the meaning of 'import' see PARA 329 note 4 ante.

7 Copyright, Designs and Patents Act 1988 s 253(3). Section 253 is directed to threats concerning certain acts of infringement and is not directed to manufacturers or importers as such: cf the Patents Act 1977 s 70(4) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 557); and *Cavity Trays Ltd v RMC Panel Products Ltd* [1996] RPC 361, CA. Consequently the protection afforded by the Copyright, Designs and Patents Act 1988 s 253(3) is not available if the threats go wider than in respect of making or importing anything and extend to eg the sale or disposal of articles already in existence: *Cavity Trays Ltd v RMC Panel Products Ltd* supra. See also *Brain v Ingledew Brown Bennison and Garrett (a firm) (No 3)* [1997] FSR 511.

8 As to the relief available see PARA 544 post.

9 Copyright, Designs and Patents Act 1988 s 253(2).

10 *Cerosa Ltd v Poseidon Industrie AB* [1973] RPC 882 (patents).

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539. Remedy at common law.

A person harmed by threats of litigation has the right to sue at common law for slander of title if the allegations are made maliciously and without just cause¹. The making of false statements about existing claims or goods is not in itself an actionable threat² but may be actionable at common law if the statements are malicious³.

1 *Barley v Walford* (1846) 15 LJQB 369; *Wren v Weild* (1869) LR 4 QB 730; *Dicks v Brooks* (1879) 15 ChD 22, CA; *Ratcliffe v Evans* [1892] 2 QB 524, CA.

2 *Surridge's Patents Ltd v Trico-Folberth Ltd* [1936] 3 All ER 26.

3 See *Mentmore Manufacturing Co Ltd v Fomento (Sterling Area) Ltd* (1955) 72 RPC 157, CA; *Jaybeam Ltd v Abru Aluminium Ltd* [1976] RPC 308; and see LIBEL AND SLANDER vol 28 (Reissue) PARA 274.

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540. What constitutes a threat.

The question whether what was done was a threat is one of fact¹. The essence of a threat is an indication that the maker has rights, and intends to enforce them². Mere notification that a design³ is protected by design right⁴ does not constitute a threat of proceedings⁶.

It may be said generally that it is sufficient that the statement complained of would be reasonably believed by the person to whom it was addressed to be a threat of proceedings for infringement of a design⁷, even though no reference is in fact made to any such proceedings⁸. The nature of the interview at which statements are made is relevant in considering whether they amount to threats⁹. The alleged threat must in some way point to the articles or class of articles manufactured or used by the claimant. A general statement that the owner of the design will protect his rights, or that action will be taken against infringers, is not sufficient¹⁰; but the form is unimportant if the document, read as a whole, would be understood as a threat¹¹, and this may be so even if the document is in form a general warning¹²; and more especially is this the case if the document has been sent to customers of the claimant¹³. The state of the defendant's knowledge of the relations between the claimant and the person receiving the threats may be material¹⁴. A communication may threaten a person other than the person to whom it is made¹⁵.

1 *Brain v Ingledew Brown Bennison & Garrett (a firm)* [1996] FSR 341, CA; *Brain v Ingledew Brown Bennison and Garrett (a firm) (No 3)* [1997] FSR 511 (patent).

2 *Rosedale Associated Manufacturers Ltd v Airfix Products Ltd* [1956] RPC 360 at 363 (this point did not arise on appeal [1957] RPC 239, CA) (registered design); *Willis and Bates Ltd v Tilley Lamp Co* (1943) 61 RPC 8 at 11 (patent); *C and P Development Co (London) Ltd v Sisabro Novelty Co Ltd* (1953) 70 RPC 277 at 282, CA (patent).

3 For the meaning of 'design' see PARA 505 ante.

4 For the meaning of 'design right' see PARA 501 ante.

6 Copyright, Designs and Patents Act 1988 s 253(4). This is so whether or not the notification is coupled with an indication of the acts to which the design is alleged to be relevant: *Paul Trading Co Ltd v J Marksmith & Co Ltd* (1952) 69 RPC 301 (patent).

7 *C and P Development Co (London) Ltd v Sisabro Novelty Co Ltd* (1953) 70 RPC 277 at 280, 282, CA (patent).

8 *Luna Advertising Co v Burnham & Co* (1928) 45 RPC 258 (patent).

9 *Paul Trading Co Ltd v J Marksmith & Co Ltd* (1952) 69 RPC 301 at 304, citing *Surridge's Patents Ltd v Trico-Folberth Ltd* [1936] 3 All ER 26 at 29-30, 53 RPC 420 at 423-424 (patent).

10 *Brauer v Sharp* (1886) 3 RPC 193 at 197; *Dick v Haslam* (1891) 8 RPC 196; *Willoughby v Taylor* (1893) 11 RPC 45; *Crowther v United Flexible Metallic Tubing Co Ltd* (1905) 22 RPC 549; *WH Howson Ltd v Algraphy Ltd* [1965] RPC 183; *Speedcranes Ltd v Thomson* 1972 SC 324, [1978] RPC 221, Ct of Sess (all patent cases).

11 *Kurtz & Co v Spence & Sons* (1887) 57 LJ Ch 238 at 247, 5 RPC 161 at 173; *Johnson v Edge* [1892] 2 Ch 1, 9 RPC 142, CA; *Douglass v Pintsch's Patent Lighting Co* [1897] 1 Ch 176, 13 RPC 673; *Craig v Dowding* (1908) 98 LT 231, 25 RPC 259, CA; *Cars v Bland Light Syndicate Ltd* (1910) 28 RPC 33; *Luna Advertising Co v Burnham & Co* (1928) 45 RPC 258 (all patent cases).

12 Eg if there are words in the warning which would point to the claimants' articles: see *Boneham and Hart v Hirst Bros & Co Ltd* (1917) 34 RPC 209 (patent).

- 13 *Johnson v Edge* [1892] 2 Ch 1, 9 RPC 142, CA (patent).
- 14 *Weldrics Ltd v Quasi-Arc Co Ltd* (1922) 39 RPC 323. It has been said that it is for the defendant to show that the threats were not directed against the claimant: *Johnson v Edge* [1892] 2 Ch 1, 9 RPC 142, CA, per Lindley LJ (patent).
- 15 *John Summers & Sons Ltd v Cold Metal Process Co* (1947) 65 RPC 75 at 96-97 (patent).

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541. To whom threats may be addressed.

A threat may be addressed either to the claimant¹, or to his customers², or to manufacturers³, or may be simply published to the world in general⁴. It may be contained in a solicitor's letter⁵, or in a statement without prejudice⁶, or in an answer to inquiries⁷. An ordinary solicitor's letter before action will usually constitute a threat, but, if a writ follows within a reasonable time⁸ and the recipient does not comply with the demands in the letter, the recipient is unlikely to be a person aggrieved by the threat⁹. Care should, however, be exercised when communicating with a person in order to put him on notice as to secondary infringement¹⁰ so as not to go further and issue threats. A threat from solicitors comes with more force than a threat from a layman¹¹. An oral threat is actionable¹², but a mere notification that the design is protected by design right is not¹³. Where the threat is to some person other than the claimant, the claimant must show that he had a real commercial interest which had been interfered with¹⁴.

¹ *Driffield and East Riding Pure Linseed Cake Co v Waterloo Mills Cake and Warehousing Co* (1886) 31 ChD 638, 3 RPC 46; *Horne v Johnston Bros* (1921) 38 RPC 366.

² *Burt v Morgan & Co Ltd* (1887) 3 TLR 666, 4 RPC 278; *Hoffnung & Co v Salsbury* (1899) 16 RPC 375; *Craig v Dowding* (1908) 25 RPC 1 (revsd 25 RPC 259, CA). See also *Speedcranes Ltd v Thomson* 1972 SC 324, [1978] RPC 221, Ct of Sess; *Bowden Controls Ltd v Acco Cable Controls Ltd* [1990] RPC 427.

³ *Willoughby v Taylor* (1893) 11 RPC 45; *Webb v Levinstein & Co Ltd* (1898) 15 RPC 78. See also *Bowden Controls Ltd v Acco Cable Controls Ltd* [1990] RPC 427.

⁴ *Johnson v Edge* [1892] 2 Ch 1, 9 RPC 142, CA. Bringing proceedings against customers without joining the alleged primary infringer may be vexatious and an abuse of the process of the court: *Jacey (Printers) v Norton and Wright Group Ltd* [1977] FSR 475. As to primary infringement see PARA 527 ante.

⁵ *Crampton v Patents Investment Co* (1888) 5 RPC 382 at 393 (affd (1889) 6 RPC 287, CA); *Combined Weighing and Advertising Co v Automatic Weighing Machine Co* (1889) 42 ChD 665, 6 RPC 502; *Engels v Hubert Unchangeable Eyelet Syndicate Ltd* (1902) 19 RPC 201, CA; but see *Day v Foster* (1890) 43 ChD 435, 7 RPC 54; *Earles Utilities Ltd v Harrison* (1934) 52 RPC 77. See also *Cerosa Ltd v Poseidon Industrie AB* [1973] RPC 882.

⁶ *Kurtz & Co v Spence & Sons* (1887) 57 LJ Ch 238 at 242, 5 RPC 161 at 173.

⁷ *Skinner & Co v Shew & Co* [1893] 1 Ch 413, sub nom *Skinner & Co v Perry* 10 RPC 1, CA.

⁸ If not, the threat is actionable: *Driffield and East Riding Pure Linseed Cake Co v Waterloo Mills Cake and Warehousing Co* (1886) 31 ChD 638, 3 RPC 46.

⁹ *Benmax v Austin Motor Co Ltd* (1953) 70 RPC 143 at 151, 157; on appeal 70 RPC 284 at 295, CA (although neither court had occasion actually to decide the point). If the recipient does comply with the demands in the letter, damages may be very heavy.

¹⁰ As to secondary infringement see PARA 528 ante.

¹¹ *HVE (Electric) Ltd v Cufflin Holdings Ltd* [1964] 1 All ER 674, [1964] 1 WLR 378, CA.

¹² *Ellis & Sons v Pogson* (1922) 40 RPC 62 (affd [1923] 2 Ch 496, 40 RPC 179, CA); *Luna Advertising Co v Burnham & Co* (1928) 45 RPC 258.

¹³ See the Copyright, Designs and Patents Act 1988 s 253(4); and PARA 540 ante.

14 *Brain v Ingledew Brown Bennison and Garrett (a firm) (No 3)* [1997] FSR 511, distinguishing *Reymes-Cole v Elite Hosiery Co Ltd* [1965] RPC 102, CA.

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542. Who may be liable.

A claim lies against the person who makes the threat, whether or not he is the design right owner¹. A threat contained in a solicitor's letter before action is as actionable as any other threat²; and a solicitor who writes such a letter may be liable as well as his client³. A statement by a solicitor that he would advise his client to bring infringement proceedings is not a threat⁴.

1 As to who is the first owner of design right see PARA 518 ante.

2 See *HVE (Electric) Ltd v Cufflin Holdings Ltd* [1964] 1 All ER 674, [1964] 1 WLR 378, CA (patent).

3 See eg *Brain v Ingledew Brown Bennison & Garrett (a firm)* [1996] FSR 341, CA; *Brain v Ingledew Brown Bennison and Garrett (a firm) (No 3)* [1997] FSR 511 (patent).

4 *Earles Utilities Ltd v Harrison* (1934) 52 RPC 77 (patent).

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543. Procedure.

Claims in respect of groundless threats of infringement proceedings must be brought in the same way as claims for infringement of design right¹. A defendant who seeks to justify the threats and who is the design right owner² or an exclusive licensee³ may counterclaim for infringement⁴. If justification is pleaded, whether or not there are counterclaims, the procedure follows that of a normal infringement claim⁵. In general, the claimant has the right to begin, but, if the threats are admitted, the defendant design right owner or exclusive licensee will begin, as in ordinary infringement proceedings⁶.

1 See PARA 536 ante. For the meaning of 'design right' see PARA 501 ante.

2 As to who is the first owner of design right see PARA 518 ante.

3 'Exclusive licensee' is not defined, but for the meaning of 'exclusive licence' see PARA 525 ante.

4 As to infringement and remedies for it see PARA 527 et seq ante.

5 As to such procedure see PARA 536 ante. A defendant who alleges that the threats were justified must give particulars of the acts of the claimant alleged to constitute an infringement: *Reymes-Cole v Elite Hosiery Co Ltd* [1961] RPC 277 (patent); *Brain v Ingledew Brown Bennison and Garrett (No 2)* [1997] FSR 271.

6 *Crompton v Patents Investment Co* (1888) 5 RPC 382 (affd (1889) 6 RPC 287, CA) (patent); *Lewis Falk Ltd v Jacobwitz* (1944) 61 RPC 116 (patent); *W Lusty & Sons Ltd v Morris Wilkinson & Co (Nottingham) Ltd* [1954] 2 All ER 347, [1954] 1 WLR 911 (registered design).

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544. Relief for actionable threats.

A claimant who has been successful in a claim in respect of groundless threats is entitled, subject always to the court's discretion¹, to:

- 200 (1) a declaration to the effect that the threats are unjustifiable²;
- 201 (2) an injunction against the continuance of the threats³;
- 202 (3) damages in respect of any loss which he has sustained by the threats⁴.

Such damages may include, for example, the loss of particular orders or of trade generally⁵, loss of seasonal trade or delay in putting goods on the market⁶, or the loss of an opportunity of disposing of a design⁷, but not the cost of defending, or preparing to defend, a subsequent claim for infringement⁸. A director, executive or shareholder may have a sufficient personal interest in the threats made to a company to entitle him to sue and recover damages⁹.

An interim injunction may be granted¹⁰; but this will not usually be done where the defendant alleges infringement¹¹. Where the threat was in wide terms, an injunction in wide terms will be granted¹².

1 *Benmax v Austin Motor Co Ltd* (1953) 70 RPC 284 at 295-296, CA (patent); *Tudor Accessories Ltd v JN Somers Ltd* [1960] RPC 215; *HVE (Electric) Ltd v Cufflin Holdings Ltd* [1964] 1 All ER 674, [1964] 1 WLR 378, CA (patent).

2 Copyright, Designs and Patents Act 1988 s 253(1)(a).

3 *Ibid* s 253(1)(b).

4 *Ibid* s 253(1)(c).

5 *Ratcliffe v Evans* [1892] 2 QB 524, CA.

6 *Earles Utilities Ltd v Jacobs* (1934) 51 TLR 43, 52 RPC 72.

7 *Skinner & Co Ltd v Shew & Co* [1894] 2 Ch 581, sub nom *Skinner & Co v Perry* 11 RPC 406; *Solanite Signs Ltd v Wood* (1933) 50 RPC 315. For the meaning of 'design' see PARA 505 ante.

8 *Benmax v Austin Motor Co Ltd* (1953) 70 RPC 143 at 157; on appeal 70 RPC 284 at 2956, CA. As to infringement see PARA 527 et seq ante.

9 *Brain v Ingledew Brown Bennison and Garrett (a firm) (No 3)* [1997] FSR 511, applying *Gerber Garment Technology Inc v Lectra Systems Ltd* [1997] RPC 443, CA.

10 *Boneham and Hart v Hirst Bros & Co Ltd* (1917) 34 RPC 209; *Luna Advertising Co v Burnham & Co* (1928) 45 RPC 258; *HVE (Electric) Ltd v Cufflin Holdings Ltd* [1964] 1 All ER 674, [1964] 1 WLR 378, CA; *Bowden Controls Ltd v Acco Cable Controls Ltd* [1990] RPC 427. As to interim injunctions see PARA 414 ante.

11 *Stringer v R Platnauer Ltd* (1932) 50 RPC 61; *Cabaret Electric Co Ltd (t/a Motorola Distributing Co) v Marconi's Wireless Telegraph Co Ltd* (1934) 52 RPC 104. Cf *International Sales Ltd v Trans-Continental Trading Co Ltd and Benno Maisel* (1934) 52 RPC 107; *Cerosa Ltd v Poseidon Industrie AB* [1973] RPC 882.

12 See *Mechanical Services (Trailer Engineering) Ltd v Avon Rubber Co Ltd* [1977] RPC 66.

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(viii) Exceptions to Rights of Design Right Owners

A. IN GENERAL

545. In general.

In addition to defences to infringement of design right¹ as, for example, that the design² does not qualify for design right protection³, that it does not satisfy the requirements for subsistence⁴, that the alleged infringing articles⁵ are not exactly or substantially to the design⁶, and general defences as, for example, an implied licence to repair⁷, delay, acquiescence and estoppel⁸, or that the claim is precluded by the EC Treaty⁹, there are certain statutory exceptions, namely infringement of copyright¹⁰, licences of right¹¹ and Crown use¹².

1 For the meaning of 'design right' see PARA 501 ante.

2 For the meaning of 'design' see PARA 505 ante.

3 As to which designs qualify for design right protection see PARA 510 ante.

4 As to the requirements for subsistence see PARA 506 et seq ante.

5 For the meaning of 'infringing article' see PARA 529 ante.

6 As to infringement and substantiality see PARA 526 ante.

7 A purchaser of an article has the right to do whatever is necessary to keep it in running order and to effect whatever repairs may be necessary in the most economical way possible: *British Leyland Motor Corp'n Ltd v Armstrong Patents Co Ltd* [1986] AC 577, [1986] 1 All ER 850, HL. As to the scope of this defence see PARAS 205, 406 ante.

8 See eg *Habib Bank Ltd v Habib Bank AG Zurich* [1981] 2 All ER 650, [1981] 1 WLR 1265, CA (passing off); *Farmers Build Ltd v Carrier Bulk Materials Handling Ltd* [1999] RPC 461, [2000] IP & T 49, CA; *Dyson Ltd v Qualtex (UK) Ltd* [2004] EWHC 2981 (Ch), [2005] RPC 395, [2005] IP & T 656 (affd [2006] EWCA Civ 166, [2006] All ER (D) 101 (Mar)). As to acquiescence and delay generally see CIVIL PROCEDURE vol 11 (2009) PARAS 373-374; EQUITY vol 16(2) (Reissue) PARA 910 et seq.

9 See the Treaty establishing the European Economic Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 86; the Treaty on European Union (Maastricht, 7 February 1992; Cm 1934) Title II art G para (1); and PARA 409 text and notes 4-5 ante.

10 See the Copyright, Designs and Patents Act 1988 s 236; and PARA 547 post.

11 See *ibid* ss 237-239 (as amended); and PARA 548 et seq post.

12 See *ibid* ss 240-244 (as amended); and PARA 552 et seq post.

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546. Power to provide for further exceptions.

The Secretary of State¹ may, if it appears to him necessary in order to comply with an international obligation of the United Kingdom² or to secure or maintain reciprocal protection for British designs³ in other countries⁴, by order provide that acts of a description specified in the order do not infringe design right⁵.

An order may make different provision for different descriptions of design⁶ or article⁷. An order must be made by statutory instrument; and no order may be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament⁸.

1 As to the Secretary of State see PARA 183 note 2 ante.

2 Copyright, Designs and Patents Act 1988 s 245(1)(a). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

3 For the meaning of 'British design' see PARA 503 note 2 ante.

4 Copyright, Designs and Patents Act 1988 s 245(1)(b). For the meaning of 'country' see PARA 502 note 11 ante.

5 Ibid s 245(1). At the date at which this volume states the law no such order had been made.

6 For the meaning of 'design' see PARA 505 ante.

7 Copyright, Designs and Patents Act 1988 s 245(2).

8 Ibid s 245(3).

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B. INFRINGEMENT OF COPYRIGHT

547. In general.

Where copyright¹ subsists in a work² which consists of or includes a design³ in which design right⁴ subsists⁵, it is not an infringement of design right⁶ in the design to do anything which is an infringement of the copyright⁷ in that work⁸.

- 1 As to copyright see PARA 54 et seq ante.
- 2 As to subsistence of copyright in a work see PARA 57 et seq ante.
- 3 For the meaning of 'design' see PARA 505 ante.
- 4 For the meaning of 'design right' see PARA 501 ante.
- 5 As to subsistence of design right see PARA 505 et seq ante.
- 6 As to infringement of design right see PARAS 527-528 ante.
- 7 As to infringement of copyright see PARA 311 ante.
- 8 Copyright, Designs and Patents Act 1988 s 236.

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C. AVAILABILITY OF LICENCES OF RIGHT

548. Licences available in last five years of design right.

Any person is entitled as of right to a licence to do in the last five years of the design right¹ term² anything which would otherwise infringe³ the design right⁴. The terms of the licence must, in default of agreement, be settled by the comptroller⁵.

The Secretary of State⁶ may, if it appears to him necessary in order to comply with an international obligation of the United Kingdom⁷ or to secure or maintain reciprocal protection for British designs⁸ in other countries⁹, by order exclude from the operation of the above provisions designs¹⁰ of a description specified in the order or designs applied to articles of a description so specified¹¹. An order must be made by statutory instrument; and no order may be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament¹².

1 For the meaning of 'design right' see PARA 501 ante.

2 As to the duration of design right see PARA 520 ante.

3 As to infringement of design right see PARAS 527-528 ante. The licensee is entitled to do anything which would be either a primary infringement (see PARA 527 ante) or a secondary infringement (see PARA 528 ante) and is further entitled to grant sub-licences: *Roger Bance and R Bance & Co Ltd's Licence of Right (Copyright) Application* [1996] RPC 667.

4 Copyright, Designs and Patents Act 1988 s 237(1). It has been held obiter that these licence of right provisions are compatible with the Agreement on Trade-Related Aspects of Intellectual Property Rights (Marrakesh, 15 April 1994; OJ L336, 23.12.94, p 214) (see PARA 452 ante): see *Azrak-Hamway International Inc's Licence of Right (Design Right and Copyright) Application* [1997] RPC 134. See also *Lenzing AG's European Patent (UK)* [1997] RPC 245; and PARA 204 ante.

5 Copyright, Designs and Patents Act 1988 s 237(2). 'The comptroller' means the Comptroller General of Patents, Designs and Trade Marks (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 577): s 263(1). As to the settlement of terms see PARA 568 et seq post.

6 As to the Secretary of State see PARA 183 note 2 ante.

7 Copyright, Designs and Patents Act 1988 s 237(3)(a). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

8 For the meaning of 'British design' see PARA 503 note 2 ante.

9 Copyright, Designs and Patents Act 1988 s 237(3)(b). For the meaning of 'country' see PARA 502 note 11 ante.

10 For the meaning of 'design' see PARA 505 ante.

11 Copyright, Designs and Patents Act 1988 s 237(3).

12 Ibid s 237(4).

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549. Powers exercisable for protection of the public interest.

Where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Competition Commission or, as the case may be, the Office of Fair Trading¹ under powers² to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations etc consists of or includes:

- 203 (1) conditions in licences granted by a design right owner³ restricting the use of the design⁴ by the licensee or the right of the design right owner to grant other licences⁵; or
- 204 (2) a refusal of a design right owner to grant licences on reasonable terms⁶,

the powers relating to enforcement orders⁷ include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the design right are to be available as of right⁸.

The terms of a licence available by virtue of these provisions must, in default of agreement, be settled by the comptroller⁹.

1 As to the Secretary of State see PARA 183 note 2 ante. As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6; and as to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12.

2 I.e. under the Competition Act 1980 s 12(5) or the Enterprise Act 2002 s 41(2), s 55(2), s 66(6), s 75(2), s 83(2), s 138(2), s 147(2) or s 160(2) or Sch 7 para 5(2) or Sch 7 para 10(2): see COMPETITION vol 18 (2009) PARAS 10, 188 et seq. Certain references in the Copyright, Designs and Patents Act 1988 s 238(1), (2) (as substituted) to various provisions of the Enterprise Act 2002 are modified to include references to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, SI 2003/1592: see art 16, Sch 4 para 7(2).

3 As to who is the first owner of design right see PARA 518 ante. For the meaning of 'design right' see PARA 501 ante.

4 For the meaning of 'design' see PARA 505 ante.

5 Copyright, Designs and Patents Act 1988 s 238(1)(a) (s 238(1), (2) substituted, and s 238(1A) added, by the Enterprise Act 2002 s 278(1), Sch 25 para 18(1), (4)).

6 Copyright, Designs and Patents Act 1988 s 238(1)(b) (as substituted: see note 5 supra).

7 I.e. the powers conferred by the Enterprise Act 2002 Sch 8: see COMPETITION vol 18 (2009) PARA 232 et seq.

8 Copyright, Designs and Patents Act 1988 s 238(1A) (as added: see note 5 supra). The references to anything permitted by the Enterprise Act 2002 Sch 8 in the Competition Act 1980 s 12(5A) (as added) and in the Enterprise Act 2002 ss 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch 7 paras 5, 10 and 11 (see COMPETITION vol 18 (2009) PARAS 10, 188 et seq) must be construed accordingly: Copyright, Designs and Patents Act 1988 s 238(2) (as substituted: see note 5 supra). See also note 2 supra.

9 Ibid s 238(3). For the meaning of 'the comptroller' see PARA 548 note 5 ante. As to the settlement of terms see PARA 568 et seq post.

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550. Licensee under licence of right not to claim connection with design right owner.

A person who has a licence of right in respect of a design¹ must not, without the consent of the design right owner²:

- 205 (1) apply to goods which he is marketing³, or proposes to market, in reliance on that licence a trade description⁴ indicating that he is the licensee of the design right owner⁵; or
- 206 (2) use any such trade description in an advertisement in relation to such goods⁶.

A contravention of these provisions is actionable by the design right owner⁷.

1 He by virtue of the Copyright, Designs and Patents Act 1988 s 237 (see PARA 548 ante) or s 238 (as amended) (see PARA 549 ante). For the meaning of 'design' see PARA 505 ante.

2 As to who is the first owner of design right see PARA 518 ante. For the meaning of 'design right' see PARA 501 ante.

3 As to references to 'marketing' see PARA 515 note 5 ante.

4 'Trade description', the reference to applying a trade description to goods, and 'advertisement' have the same meanings as in the Trade Descriptions Act 1968 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 478, 481, 487); Copyright, Designs and Patents Act 1988 s 254(3).

5 Ibid s 254(1)(a).

6 Ibid s 254(1)(b). See *Pioneer Oil Tools Ltd's Licence of Right (Copyright) Application* [1997] RPC 573.

7 Copyright, Designs and Patents Act 1988 s 254(2).

UPDATE

550 Licensee under licence of right not to claim connection with design right owner

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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551. Undertaking to take licence of right in infringement proceedings.

If in proceedings for infringement of design right¹ in a design² in respect of which a licence is available as of right³ the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the comptroller⁴:

- 207 (1) no injunction may be granted against him⁵;
- 208 (2) no order⁶ for delivery up may be made⁷; and
- 209 (3) the amount recoverable against him by way of damages or on an account of profits⁸ may not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement⁹.

An undertaking may be given at any time before final order in the proceedings, without any admission of liability¹⁰.

Nothing in these provisions affects the remedies available in respect of an infringement committed before licences of right were available¹¹.

1 For the meaning of 'design right' see PARA 501 ante. As to infringement of design right see PARAS 527-528 ante; and as to proceedings for infringement of design right see PARA 530 ante.

2 For the meaning of 'design' see PARA 505 ante.

3 I.e. under the Copyright, Designs and Patents Act 1988 s 237 (see PARA 548 ante) or s 238 (as amended) (see PARA 549 ante).

4 I.e. under *ibid* s 237 or, as the case may be s 238 (as amended). For the meaning of 'the comptroller' see PARA 548 note 5 ante.

5 Copyright, Designs and Patents Act 1988 s 239(1)(a). This provision only applies where the defendant undertakes to apply for a licence immediately. It does not cover the case where he undertakes only to apply for a licence in the event of losing at trial, in which circumstances the claimant may be entitled to an injunction under the principles ordinarily applying: *Dyrlund Smith A/S v Turberville Smith Ltd* [1998] FSR 774, [1998] All ER (D) 133, CA. As to injunctions see PARA 412 ante.

6 I.e. under the Copyright, Designs and Patents Act 1988 s 230: see PARA 534 ante.

7 *Ibid* s 239(1)(b).

8 As to the power to award damages or to order an account of profits see PARA 530 ante.

9 Copyright, Designs and Patents Act 1988 s 239(1)(c). Section 239 is concerned with a hypothetical licence which has a limiting effect on the remedies which can be obtained against an infringer and can be invoked even in a case where the design right has expired: *Ultraframe (UK) Ltd v Eurocell Building Plastics Ltd* [2005] EWCA Civ 761, [2006] 1 P & T 222, [2005] RPC 894. There is nothing to prevent a defendant who had already sought a licence under the Copyright, Designs and Patents Act 1988 s 237 (see PARA 548 ante) from then invoking s 239, as s 237 is concerned with an application for a licence whereas s 239 is concerned with an undertaking to take a licence, and there is neither any inconsistency nor any overlap between seeking a licence and promising to take one; likewise, where a licence under s 237 had actually been obtained by the defendant but infringement proceedings are on foot in relation to alleged infringements prior to the date the licence takes effect under s 247(6) (see PARA 568 post) the defendant may take advantage of s 239: *Ultraframe (UK) Ltd v Eurocell Building Plastics Ltd* supra at 118 per Neuberger LJ.

10 Copyright, Designs and Patents Act 1988 s 239(2). Where the comptroller has settled the terms of a licence before the conclusion of pending infringement proceedings, he probably will not entertain any challenge to the design right or the need for a licence but may include a term in the licence for repayment of royalties in the event of the claimant being unsuccessful in the infringement proceedings: *Roger Bance and R Bance & Co Ltd's Licence of Right (Copyright) Application* [1996] RPC 667.

11 Copyright, Designs and Patents Act 1988 s 239(3). See eg *Ocular Sciences Ltd v Aspect Vision Care Ltd*, *Geoffrey Harrison Galley v Ocular Sciences Ltd* [1997] RPC 289 at 420 (copyright).

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(ix) Crown Use of Designs

552. In general.

A government department¹, or a person authorised in writing² by a government department, may without the licence of the design right owner³:

- 210 (1) do anything for the purpose of supplying articles for the services of the Crown⁴; or
- 211 (2) dispose of articles no longer required for the services of the Crown⁵,

and nothing done by virtue of these provisions infringes the design right⁶.

The authority of a government department in respect of Crown use⁷ of a design may be given to a person either before or after the use and whether or not he is authorised, directly or indirectly, by the design right owner to do anything in relation to the design⁸.

A person acquiring anything sold in the exercise of powers conferred by these provisions, and any person claiming under him, may deal with it in the same manner as if the design right were held on behalf of the Crown⁹.

1 'Government department' includes a Northern Ireland department and any part of the Scottish Administration: Copyright, Designs and Patents Act 1988 s 263(1) (definition amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 93(1), (4)(b)). As to government in Northern Ireland and Scotland see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 For the meaning of 'writing' see PARA 522 note 7 ante.

3 As to the licence of the design right owner see PARAS 518, 522 note 10, 523 note 5 ante. As to who is the first owner of design right see PARA 518 ante. For the meaning of 'design right' see PARA 501 ante.

4 Copyright, Designs and Patents Act 1988 s 240(1)(a). For the meaning of 'the Crown' see PARA 511 note 7 ante. References to 'the services of the Crown' are references to: (1) the defence of the realm; (2) foreign defence purposes; and (3) health service purposes: s 240(2). The reference to the supply of articles for 'foreign defence purposes' is to their supply: (a) for the defence of a country outside the realm in pursuance of an agreement or arrangement to which the government of that country and Her Majesty's government in the United Kingdom are parties; or (b) for use by armed forces operating in pursuance of a resolution of the United Nations or one of its organs: s 240(3). For the meaning of 'country' see PARA 502 note 11 ante; and for the meaning of 'United Kingdom' see PARA 3 note 1 ante. The reference to the supply of articles for 'health service purposes' is a reference to their supply for the purpose of providing: (i) primary medical services under the National Health Service Act 1977 Pt 1 (ss 1-28Y) (as amended and added); (ii) pharmaceutical services under the National Health Service Act 1977 Pt II (ss 29-56) (as amended); or (iii) local pharmaceutical services provided under a pilot scheme established under the Health and Social Care Act 2001 s 28, or a Local Pharmaceutical Services scheme established under the National Health Service Act 1977 Sch 8A (as added): Copyright, Designs and Patents Act 1988 s 240(4) (amended by the National Health Service (Primary Care) Act 1997 s 41(10), Sch 2 para 63; the Health and Social Care Act 2001 s 67(1), Sch 5 Pt 1 para 7; and the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 para 52, Sch 14 Pt 4). As to the National Health Service Act 1977 and the Health and Social Care Act 2001 see HEALTH SERVICES.

As respects a period of emergency, references to the services of the Crown include the purposes specified in the Copyright, Designs and Patents Act 1988 s 244(1) (see PARA 553 post): s 244(2).

5 Ibid s 240(1)(b).

6 Ibid s 240(1).

7 'Crown use', in relation to a design, means the doing of anything by virtue of *ibid* s 240 (as amended) which would otherwise be an infringement of design right in the design: s 240(5). As respects a period of emergency, references to 'Crown use' include any act which would, apart from s 244 (see *PARA 553 post*), be an infringement of design right: s 244(2). For the meaning of 'design' see *PARA 505 ante*. As to the acts which would otherwise be an infringement of design right see *PARAS 527-528 ante*.

8 *Ibid* s 240(6).

9 *Ibid* s 240(7).

UPDATE

552 In general

NOTE 1--'Government department' also includes any part of the Welsh Assembly Government: 1988 Act s 263(1) (amended by the Government of Wales Act 2006 Sch 10 para 31).

NOTE 4--1988 Act s 240(4) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 113.

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553. Special provision for Crown use during emergency.

During a period of emergency¹ the powers exercisable in relation to a design² by virtue of Crown use³ include power to do any act which would otherwise be an infringement of design right⁴ for any purpose which appears to the government department concerned⁵ necessary or expedient:

- 212 (1) for the efficient prosecution of any war in which Her Majesty may be engaged⁶;
- 213 (2) for the maintenance of supplies and services essential to the life of the community⁷;
- 214 (3) for securing a sufficiency of supplies and services essential to the well-being of the community⁸;
- 215 (4) for promoting the productivity of industry, commerce and agriculture⁹;
- 216 (5) for fostering and directing exports and reducing imports, or imports of any classes, from all or any countries¹⁰ and for redressing the balance of trade¹¹;
- 217 (6) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community¹²; or
- 218 (7) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any country outside the United Kingdom¹³ which is in grave distress as the result of war¹⁴.

1 'Period of emergency' means a period beginning with such date as may be declared by Order in Council to be the beginning, and ending with such date as may be so declared to be the end, of a period of emergency for the purposes of the Copyright, Designs and Patents Act 1988 s 244: s 244(3). No Order in Council under s 244 may be submitted to Her Majesty unless a draft of it has been laid before and approved by a resolution of each House of Parliament: s 244(4). At the date at which this volume states the law no such Order in Council had been made.

2 For the meaning of 'design' see PARA 505 ante.

3 ie by virtue of the Copyright, Designs and Patents Act 1988 s 240 (as amended): see PARA 552 ante. For the meaning of 'Crown use' see PARA 552 note 7 ante.

4 For the meaning of 'design right' see PARA 501 ante. As to infringement of design right see PARAS 527-528 ante.

5 'The government department concerned', in relation to Crown use, means the government department by which or on whose authority the act was done: Copyright, Designs and Patents Act 1988 s 240(5). For the meaning of 'government department' see PARA 552 note 1 ante.

6 Ibid s 244(1)(a).

7 Ibid s 244(1)(b).

8 Ibid s 244(1)(c).

9 Ibid s 244(1)(d).

10 For the meaning of 'country' see PARA 502 note 11 ante.

11 Copyright, Designs and Patents Act 1988 s 244(1)(e).

- 12 Ibid s 244(1)(f).
- 13 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.
- 14 Copyright, Designs and Patents Act 1988 s 244(1)(g).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(ix) Crown Use of Designs/554. Settlement of terms for Crown use.

554. Settlement of terms for Crown use.

Where Crown use¹ is made of a design², the government department concerned³ must:

- 219 (1) notify the design right owner⁴ as soon as practicable⁵; and
- 220 (2) give him such information as to the extent of the use as he may from time to time require⁶,

unless it appears to the department that it would be contrary to the public interest to do so or the identity of the design right owner cannot be ascertained on reasonable inquiry⁷.

Crown use of a design must be on such terms as, either before or after the use, are agreed between the government department concerned and the design right owner with the approval of the Treasury⁸ or, in default of agreement, are determined by the court⁹. Where the identity of the design right owner cannot be ascertained on reasonable inquiry, the government department concerned may apply to the court which may order that no royalty or other sum is payable in respect of Crown use of the design until the owner agrees terms with the department or refers the matter to the court for determination¹⁰.

1 For the meaning of 'Crown use' see PARA 552 note 7 ante.

2 For the meaning of 'design' see PARA 505 ante. As to Crown use of designs see PARAS 552-553 ante.

3 For the meaning of 'the government department concerned' see PARA 553 note 5 ante.

4 For the meaning of 'design right' see PARA 501 ante. As to who is the first owner of design right see PARA 518 ante.

5 Copyright, Designs and Patents Act 1988 s 241(1)(a).

6 Ibid s 241(1)(b).

7 Ibid s 241(1).

8 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

9 Copyright, Designs and Patents Act 1988 s 241(2). As to references to the court see PARA 587 post.

10 Ibid s 241(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(ix) Crown Use of Designs/555. Rights of third parties in case of Crown use.

555. Rights of third parties in case of Crown use.

The provisions of any licence, assignment¹ or agreement made between the design right owner², or anyone deriving title from him or from whom he derives title, and any person other than a government department³ are of no effect in relation to Crown use⁴ of a design⁵, or any act incidental to Crown use⁶, so far as they:

- 221 (1) restrict or regulate anything done in relation to the design, or the use of any model, document or other information relating to it⁷; or
- 222 (2) provide for the making of payments in respect of, or calculated by reference to, such use⁸,

and the copying or issuing to the public of copies of any such model or document in connection with the thing done, or any such use, is deemed not to be an infringement of any copyright⁹ in the model or document¹⁰. These provisions are not to be construed as authorising the disclosure of any such model, document or information in contravention of the licence, assignment or agreement¹¹.

Where an exclusive licence¹² is in force in respect of the design:

- 223 (a) if the licence was granted for royalties¹³, any agreement between the design right owner and a government department under the provisions relating to the settlement of terms for Crown use¹⁴ requires the consent of the licensee¹⁵, and the licensee is entitled to recover from the design right owner such part of the payment for Crown use¹⁶ as may be agreed between them or, in default of agreement, determined by the court¹⁷;
- 224 (b) if the licence was granted otherwise than for royalties, the provisions relating to the settlement of terms for Crown use apply in relation to anything done which¹⁸ would be an infringement of the rights of the licensee with the substitution for references to the design right owner of references to the licensee¹⁹, and the provisions relating to the settlement of terms for Crown use do not apply in relation to anything done by the licensee by virtue of an authority given under the provisions²⁰ relating to Crown use of designs²¹.

Where the design right has been assigned to the design right owner in consideration of royalties:

- 225 (i) the provisions relating to the settlement of terms for Crown use apply in relation to Crown use of the design as if the references to the design right owner included the assignor, and any payment for Crown use must be divided between them in such proportion as may be agreed or, in default of agreement, determined by the court²²; and
- 226 (ii) the provisions relating to the settlement of terms for Crown use apply in relation to any act incidental to Crown use as they apply in relation to Crown use of the design²³.

- 1 As to licences and assignments of design right see PARA 522 ante. For the meaning of 'design right' see PARA 501 ante.
- 2 As to who is the first owner of design right see PARA 518 ante.
- 3 For the meaning of 'government department' see PARA 552 note 1 ante.
- 4 For the meaning of 'Crown use' see PARA 552 note 7 ante.
- 5 For the meaning of 'design' see PARA 505 ante.
- 6 'Act incidental to Crown use' means anything done for the services of the Crown to the order of a government department by the design right owner in respect of a design: Copyright, Designs and Patents Act 1988 s 242(6). For the meaning of 'the Crown' see PARA 511 note 7 ante.
- 7 Ibid s 242(1)(a). As to the use of models, documents or information see PARA 556 post.
- 8 Ibid s 242(1)(b).
- 9 As to infringement of copyright see PARA 311 et seq ante.
- 10 Copyright, Designs and Patents Act 1988 s 242(1).
- 11 Ibid s 242(2).
- 12 For the meaning of 'exclusive licence' see PARA 525 ante.
- 13 'Royalties' includes any benefit determined by reference to the use of the design: Copyright, Designs and Patents Act 1988 s 242(6).
- 14 Ie ibid s 241: see PARA 554 ante.
- 15 Ibid s 242(3)(a)(i).
- 16 'Payment for Crown use' means such amount as is payable by the government department concerned by virtue of ibid s 241: s 242(6). For the meaning of 'the government department concerned' see PARA 553 note 5 ante.
- 17 Ibid s 242(3)(a)(ii). As to references to the court see PARA 587 post.
- 18 Ie but for ibid s 240 (as amended) (see PARA 552 ante) and s 242(1) (see the text to notes 1-10 supra).
- 19 Ibid s 242(3)((b)(i).
- 20 Ie ibid s 240 (as amended): see PARA 552 ante.
- 21 Ibid s 242(3)(b)(ii).
- 22 Ibid s 242(4)(a). As to references to the court see PARA 587 post.
- 23 Ibid s 242(4)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(ix) Crown Use of Designs/556. Use of models, documents or information.

556. Use of models, documents or information.

Where any model, document or other information relating to a design¹ is used in connection with Crown use² of the design, or any act incidental to Crown use³, the provisions relating to the settlement of terms for Crown use⁴ apply to the use of the model, document or other information with the substitution for the references to the design right owner of references to the person entitled to the benefit of any provision of an agreement rendered inoperative by the provisions⁵ relating to the rights of third parties in cases of Crown use⁶.

1 For the meaning of 'design' see PARA 505 ante.

2 For the meaning of 'Crown use' see PARA 552 note 7 ante.

3 For the meaning of 'act incidental to Crown use' see PARA 555 note 6 ante.

4 Ie the Copyright, Designs and Patents Act 1988 s 241: see PARA 554 ante.

5 Ie by ibid s 242(1): see PARA 555 ante.

6 Ibid s 242(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(ix) Crown Use of Designs/557. Compensation for loss of profit.

557. Compensation for loss of profit.

Where Crown use¹ is made of a design², the government department concerned³ must pay to the design right owner⁴, or, if there is an exclusive licence⁵ in force in respect of the design, to the exclusive licensee⁶, compensation for any loss resulting from his not being awarded a contract to supply the articles made to the design⁷. Compensation is payable only to the extent that such a contract could have been fulfilled from his existing manufacturing capacity; but is payable notwithstanding the existence of circumstances rendering him ineligible for the award of such a contract⁸.

In determining the loss, regard must be had to the profit which would have been made on such a contract and to the extent to which any manufacturing capacity was under-used⁹. No compensation is payable in respect of any failure to secure contracts for the supply of articles made to the design otherwise than for the services of the Crown¹⁰. The amount payable must, if not agreed between the design right owner or licensee and the government department concerned with the approval of the Treasury¹¹, be determined by the court on a reference made¹²; and it is in addition to any amount payable under the provisions¹³ relating to the settlement of terms for Crown use and the rights of third parties in case of Crown use¹⁴.

1 For the meaning of 'Crown use' see PARA 552 note 7 ante.

2 For the meaning of 'design' see PARA 505 ante.

3 For the meaning of 'the government department concerned' see PARA 553 note 5 ante.

4 Copyright, Designs and Patents Act 1988 s 243(1)(a). For the meaning of 'design right' see PARA 501 ante. As to who is the first owner of design right see PARA 518 ante.

5 For the meaning of 'exclusive licence' see PARA 525 ante.

6 Copyright, Designs and Patents Act 1988 s 243(1)(b).

7 Ibid s 243(1).

8 Ibid s 243(2).

9 Ibid s 243(3).

10 Ibid s 243(4). For the meaning of 'the services of the Crown' see PARA 552 note 4 ante.

11 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

12 Ie on a reference under the Copyright, Designs and Patents Act 1988 s 252: see PARA 587 post.

13 Ie ibid s 241 (see PARA 554 ante) or s 242 (see PARA 555 ante).

14 Ibid s 243(5).

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(x) Jurisdiction of the Comptroller and the Court

A. POWER TO MAKE RULES

558. Secretary of State's power to make rules.

The Secretary of State¹ may make rules for regulating the procedure to be followed in connection with any proceeding in relation to design right² before the comptroller³.

Rules may, in particular, make provision:

- 227 (1) prescribing forms⁴;
- 228 (2) requiring fees to be paid⁵;
- 229 (3) authorising the rectification of irregularities of procedure⁶;
- 230 (4) regulating the mode of giving evidence and empowering the comptroller to compel the attendance of witnesses and the disclosure of and production of documents⁷;
- 231 (5) providing for the appointment of advisers to assist the comptroller in proceedings before him⁸;
- 232 (6) prescribing time limits for doing anything required to be done, and providing for the alteration of any such limit⁹; and
- 233 (7) empowering the comptroller to award costs and to direct how, to what party, and from what parties, costs are to be paid¹⁰.

Rules must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament¹¹. Rules prescribing fees require the consent of the Treasury¹².

The remuneration of an adviser appointed to assist the comptroller must be determined by the Secretary of State with the consent of the Treasury and must be defrayed out of money provided by Parliament¹³.

1 As to the Secretary of State see PARA 183 note 2 ante.

2 I.e. under the Copyright, Designs and Patents Act 1988 Pt III (ss 213-264) (as amended). For the meaning of 'design right' see PARA 501 ante.

3 Ibid s 250(1). For the meaning of 'the comptroller' see PARA 548 note 5 ante. The Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130 (amended by SI 1990/1453; SI 1992/615; SI 1999/3195; SI 2006/760) have been made: see PARA 559 et seq post.

4 Copyright, Designs and Patents Act 1988 s 250(2)(a).

5 Ibid s 250(2)(b).

6 Ibid s 250(2)(c).

7 Ibid s 250(2)(d).

8 Ibid s 250(2)(e).

9 Ibid s 250(2)(f).

10 Ibid s 250(2)(g).

11 Ibid s 250(5).

12 Ibid s 250(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

13 Ibid s 250(4).

UPDATE

558 Secretary of State's power to make rules

NOTE 3--SI 1989/1130 further amended: SI 2009/546, SI 2009/3348.

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B. JURISDICTION OF THE COMPTROLLER

(A) IN GENERAL

559. Jurisdiction of the comptroller.

The comptroller¹ has jurisdiction to decide the following matters in relation to design right²:

- 234 (1) to determine disputes relating to the subsistence of design right, the term of design right, or the identity of the person in whom design right first vested and any incidental question of fact or law arising in connection therewith³;
- 235 (2) to settle the terms of a licence of right⁴;
- 236 (3) to vary the terms of a royalty-free licence granted when the identity of the design right owner could not be ascertained⁵;
- 237 (4) to decide an application by the design right owner to vary the terms of a licence⁶.

1 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 For the meaning of 'design right' see PARA 501 ante.

3 See PARA 560 et seq post.

4 See PARA 568 et seq post.

5 See PARA 572 et seq post.

6 See PARA 574 et seq post.

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(B) DISPUTES RELATING TO DESIGN RIGHT

560. Jurisdiction to decide matters relating to design right.

A party to a dispute as to any of the following matters may refer the dispute to the comptroller¹ for his decision:

- 238 (1) the subsistence of design right²;
- 239 (2) the term of design right³; or
- 240 (3) the identity of the person in whom design right first vested⁴,

and the comptroller's decision on the reference is binding on the parties to the dispute⁵.

No other court or tribunal may decide any such matter except:

- 241 (a) on a reference or appeal from the comptroller⁶;
- 242 (b) in infringement⁷ or other proceedings⁸ in which the issue arises incidentally⁹;
- or
- 243 (c) in proceedings brought with the agreement of the parties or the leave of the comptroller¹⁰.

The comptroller has jurisdiction to decide any incidental question of fact or law arising in the course of a reference under these provisions¹¹.

1 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 Copyright, Designs and Patents Act 1988 s 246(1)(a). For the meaning of 'design right' see PARA 501 ante. As to subsistence of design right see PARA 505 et seq ante.

3 Ibid s 246(1)(b). As to the duration of design right see PARA 520 ante.

4 Ibid s 246(1)(c). As to who is the first owner of design right see PARA 518 ante.

5 Ibid s 246(1).

6 Ibid s 246(2)(a). As to references and appeals see PARA 586 post.

7 As to infringement proceedings see PARA 530 et seq ante.

8 Eg proceedings relating to Crown use of designs: see PARA 552 et seq ante.

9 Copyright, Designs and Patents Act 1988 s 246(2)(b).

10 Ibid s 246(2)(c).

11 Ibid s 246(3).

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561. Proceedings in respect of a dispute.

Proceedings¹ in respect of a dispute as to:

- 244 (1) the subsistence of design right²;
- 245 (2) the term of design right³; or
- 246 (3) the identity of the person in whom design right first vested⁴,

must be commenced by the service by the applicant⁵ on the comptroller of a notice in the prescribed form⁶. There must be served with that notice a statement in duplicate setting out the name and address of the other party to the dispute ('the respondent'), the issues in dispute, the applicant's case and the documents relevant to his case⁷.

Within 14 days⁸ of the receipt of the notice, the comptroller must send a copy of the notice, together with a copy of the applicant's statement, to the respondent⁹. Within 28 days of the receipt by him of those documents, the respondent must serve on the comptroller a counter-statement and must at the same time serve a copy of it on the applicant¹⁰. Such counter-statement must set out full particulars of the grounds on which he contests the applicant's case, any issues on which he and the applicant are in agreement, and the documents relevant to his case¹¹. Within 21 days of the service on him of the counter-statement, the applicant may serve a further statement on the comptroller setting out the grounds on which he contests the respondent's case, and must at the same time serve a copy of it on the respondent¹².

No amended statement or further statement may be served by either party except by leave or direction of the comptroller¹³.

1 'Proceedings' means proceedings before the comptroller in respect of a dispute or application; 'dispute' means a dispute as to any of the matters referred to in the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 3(1); and 'application' means an application to the comptroller to settle or vary the terms of a licence of right (see PARA 568 et seq post) or to adjust the terms of a licence (see PARA 574 et seq post); r 2(1). In the case of r 3, the proceedings are those under the Copyright, Designs and Patents Act 1988 s 246 (see PARA 560 ante): Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 3(1). For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 Ibid r 3(1)(a). For the meaning of 'design right' see PARA 501 ante. As to subsistence of design right see PARA 505 et seq ante.

3 Ibid r 3(1)(b). As to the duration of design right see PARA 520 ante.

4 Ibid r 3(1)(c). As to who is the first owner of design right see PARA 518 ante.

5 'Applicant' means a person who has referred a dispute or made an application to the comptroller: ibid r 2(1). As to the service of documents see PARA 582 post.

6 Ibid r 3(1). For the prescribed form of notice see r 3(1), Sch 1 Form 1; and for the prescribed fee payable on an application under r 3(1) see r 24, Sch 2 para 1 (substituted by SI 1992/615). As to the use of forms see PARA 583 post.

7 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 3(1). As to the rectification of documents see PARA 577 post.

8 As to time limits see PARA 580 post.

- 9 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 3(2).
- 10 Ibid r 3(3).
- 11 Ibid r 3(3).
- 12 Ibid r 3(4).
- 13 Ibid r 3(5). As to directions by the comptroller see PARA 562 post.

UPDATE

561 Proceedings in respect of a dispute

NOTE 6--SI 1989/1130 Sch 1 Form 1 amended: SI 2009/546.

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562. Comptroller's directions.

The comptroller¹ must give such directions as to the further conduct of proceedings² as he considers appropriate including directing the party or parties to attend a case management conference or a pre-hearing review or both³. If a party fails to comply with any direction given under these provisions, the comptroller may in awarding costs take account of such default⁴.

1 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 For the meaning of 'proceedings' see PARA 561 note 1 ante.

3 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 4(1) (amended by SI 1999/3195).

4 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 4(2).

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563. Procedure and evidence at hearing.

Unless the comptroller¹ otherwise directs, all evidence in the proceedings² must be by statutory declaration, witness statement or affidavit³. Where the comptroller thinks fit in any particular case to take oral evidence in lieu of, or in addition to, evidence by statutory declaration, witness statement or affidavit, he may so direct and, unless he directs otherwise, must allow any witness to be cross-examined on his evidence⁴. A party to the proceedings who desires to make oral representations must so notify the comptroller; and the comptroller must, unless he and the parties agree to a shorter period, give at least 14 days' notice⁵ of the time and place of the hearing to the parties⁶.

Where in proceedings before the comptroller, a party adduces evidence of a statement made by a person otherwise than while giving oral evidence in the proceedings and does not call that person as a witness, the comptroller may, if he thinks fit, permit any other party to the proceedings to call that person as a witness and cross-examine him on the statement as if he had been called by the first-mentioned party and as if the statement were his evidence in chief⁷.

If a party intends to refer at a hearing to any document not already referred to in the proceedings, he must, unless the comptroller and the other party agree to a shorter period, give 14 days' notice of his intention, together with particulars of every document to which he intends to refer, to the comptroller and the other party⁸. At any stage of the proceedings the comptroller may direct that such documents, information or evidence as he may require must be filed within such time as he may specify⁹.

The hearing of any proceedings, or part of proceedings, under these provisions must be in public, unless the comptroller, after consultation with the parties, otherwise directs¹⁰.

1 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 For the meaning of 'proceedings' see PARA 561 note 1 ante.

3 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 5(1) (r 5(1), (2) amended, and r 5(7), (8) added, by SI 1999/3195). The comptroller may give a direction as he thinks fit in any particular case that evidence is to be given by affidavit or statutory declaration instead of or in addition to a witness statement: Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 5(7) (as so added). As to evidence generally see PARA 578 post; and as to the rectification of documents and irregularities in procedure see PARA 577 post. As to statutory declarations see the Statutory Declarations Act 1835 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1024. As to affidavits see CIVIL PROCEDURE vol 11 (2009) PARA 989 et seq; and as to witness statements see CIVIL PROCEDURE vol 11 (2009) PARA 979 et seq.

4 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 5(2) (as amended: see note 3 supra).

5 As to time limits see PARA 580 post. As to the service of documents see PARA 582 post.

6 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 5(3).

7 Ibid r 5(8) (as added: see note 3 supra).

8 Ibid r 5(4).

9 Ibid r 5(5).

10 Ibid r 5(6).

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564. Representation and rights of audience.

Any party to the proceedings¹ may appear in person or be represented by counsel or a solicitor (of any part of the United Kingdom²) or a patent agent or any other person whom he desires to represent him³. Anything required or authorised⁴ to be done by or in relation to any person may be done by or in relation to his agent⁵. Where, after a person has become a party to the proceedings, he appoints an agent for the first time or appoints an agent in substitution for another, the newly appointed agent must give written⁶ notice of his appointment to the comptroller⁷ and to every other party to the proceedings⁸.

The comptroller may refuse to recognise as such an agent in respect of any proceedings before him:

- 247 (1) a person who has been convicted under the Patents Act 1949⁹, the Patents Act 1977¹⁰ or the Copyright, Designs and Patents Act 1988¹¹ of an offence¹²;
- 248 (2) any individual whose name has been erased from and not restored to, or who is suspended from, the register of patent agents¹³ on the ground of misconduct¹⁴;
- 249 (3) a person who is found by the Secretary of State¹⁵ to have been guilty of such conduct as would, in the case of an individual registered in the register of patent agents, render him liable to have his name erased from the register on the ground of misconduct¹⁶;
- 250 (4) a partnership or body corporate of which one of the partners or directors is a person whom the comptroller could refuse to recognise under head (1), (2) or (3) above¹⁷.

1 For the meaning of 'proceedings' see PARA 561 note 1 ante.

2 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

3 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 6(1). As to patent agents see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 614 et seq. As to the rectification of irregularities in procedure see PARA 577 post.

4 Ie by the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130 (as amended).

5 Ibid r 6(2).

6 For the meaning of 'written' see PARA 522 note 7 ante.

7 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

8 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 6(3). As to the service of documents see PARA 582 post.

9 Ie under the Patents Act 1949 s 88 (repealed).

10 Ie under the Patents Act 1977 s 114 (repealed).

11 Ie under the Copyright, Designs and Patents Act 1988 s 276: see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 615.

12 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 6(4)(a) (amended by SI 1990/1453).

13 In the register kept in pursuance of rules made under the Copyright, Designs and Patents Act 1988 s 275: see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 620 et seq.

14 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 6(4)(b).

15 As to the Secretary of State see PARA 183 note 2 ante.

16 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 6(4)(c).

17 Ibid r 6(4)(d).

UPDATE

564 Representation and rights of audience

TEXT AND NOTES 1-3--SI 1989/1130 r 6(1) amended: SI 2009/3348.

TEXT AND NOTES 13-16--SI 1989/1130 r 6(4)(b), (c) amended: SI 2009/3348.

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565. Application to be made a party to proceedings.

A person who claims to have a substantial interest in a dispute¹ in respect of which proceedings² have been commenced may apply to the comptroller³ to be made a party to the dispute in the prescribed form⁴, supported by a statement of his interest⁵. He must serve a copy of his application, together with his statement, on every party to the proceedings⁶.

Upon being satisfied of the substantial interest of that person in the dispute, the comptroller must grant the application and must give directions or further directions⁷ as may be necessary to enable that person to participate in the proceedings as a party to the dispute⁸.

1 For the meaning of 'dispute' see PARA 561 note 1 ante.

2 For the meaning of 'proceedings' see PARA 561 note 1 ante.

3 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

4 For the prescribed form of application see the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 7(1), Sch 1 Form 2. As to the use of forms see PARA 583 post.

5 Ibid r 7(1). For the prescribed fee payable on an application under r 7(1) see r 24, Sch 2 para 2 (substituted by SI 1992/615). As to the rectification of documents and irregularities in procedure see PARA 577 post.

6 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 7(1). As to the service of documents see PARA 582 post.

7 Ie under ibid r 4(1) (as amended): see PARA 562 ante.

8 Ibid r 7(2).

UPDATE

565 Application to be made a party to proceedings

NOTE 4--SI 1989/1130 Sch 1 Form 2 amended: SI 2009/546.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(B) Disputes relating to Design Right/566. Withdrawal of reference.

566. Withdrawal of reference.

A party, including a person made a party to the proceedings¹, may, at any time before the comptroller's decision², withdraw from the proceedings by serving³ a notice to that effect on the comptroller and every other party to the proceedings; but such withdrawal is without prejudice to the comptroller's power to make an order as to the payment of costs incurred up to the time of service of the notice⁴.

1 le under the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 7: see PARA 565 ante. For the meaning of 'proceedings' see PARA 561 note 1 ante.

2 For the meaning of 'the comptroller' see PARA 548 note 5 ante. As to the comptroller's decision see PARA 567 post.

3 As to the service of documents see PARA 582 post.

4 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 8. As to costs generally see PARA 581 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(B) Disputes relating to Design Right/567. Decision of the comptroller.

567. Decision of the comptroller.

After hearing the party or parties desiring to be heard¹, or if none of the parties so desires, then without a hearing, the comptroller² must decide the dispute³ and notify his decision to the parties, giving written⁴ reasons for his decision if so required by any party⁵.

1 As to procedure and evidence at a hearing see PARA 563 ante.

2 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

3 For the meaning of 'dispute' see PARA 561 note 1 ante.

4 For the meaning of 'written' see PARA 522 note 7 ante.

5 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 9. As to the power of the comptroller to award costs see PARA 581 post. As to appeals from a decision of the comptroller see PARA 586 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(C) Settlement of Terms of Licence of Right/568. Application to settle terms of licence of right.

(C) SETTLEMENT OF TERMS OF LICENCE OF RIGHT

568. Application to settle terms of licence of right.

A person requiring a licence which is available as of right by virtue of:

- 251 (1) the provisions¹ relating to licences available in the last five years of design right²; or
- 252 (2) an order under the provisions³ relating to licences made available in the public interest⁴,

may apply to the comptroller⁵ to settle the terms of the licence⁶. No application for the settlement of the terms of a licence available in the last five years of design right may be made earlier than one year before the earliest date on which the licence may take effect⁷.

The terms of a licence settled by the comptroller must authorise the licensee to do:

- 253 (a) in the case of a licence available in the last five years of design right, everything which would be an infringement of the design right⁸ in the absence of a licence⁹;
- 254 (b) in the case of a licence made available in the public interest, everything in respect of which a licence is so available¹⁰.

In settling the terms of a licence, the comptroller must have regard to such factors as may be prescribed by the Secretary of State¹¹ by order made by statutory instrument¹².

Where the terms of a licence are settled by the comptroller, the licence has effect:

- 255 (i) in the case of an application in respect of a licence available in the last five years of design right made before the earliest date on which the licence may take effect, from that date¹³;
- 256 (ii) in any other case, from the date on which the application to the comptroller was made¹⁴.

¹ ie a licence available as of right by virtue of the Copyright, Designs and Patents Act 1988 s 237: see PARA 548 ante.

² Ibid s 247(1)(a). For the meaning of 'design right' see PARA 501 ante. As to the duration of design right see PARA 520 ante.

³ ie a licence available as of right by virtue of ibid s 238 (as amended): see PARA 549 ante.

⁴ Ibid s 247(1)(b).

⁵ For the meaning of 'the comptroller' see PARA 548 note 5 ante.

⁶ Copyright, Designs and Patents Act 1988 s 247(1). As to the procedure on applications see PARA 569 et seq post.

7 Ibid s 247(2). A single application may be made covering more than one design right: cf *Split Roller Bearing Co Ltd's Licence of Right (Copyright) Application* [1996] RPC 225.

8 As to infringement of design right see PARAS 527-528 ante.

9 Copyright, Designs and Patents Act 1988 s 247(3)(a).

10 Ibid s 247(3)(b).

11 As to the Secretary of State see PARA 183 note 2 ante.

12 Copyright, Designs and Patents Act 1988 s 247(4). No such order may be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament: s 247(5). At the date at which this volume states the law no such order had been made.

13 Ibid s 247(6)(a).

14 Ibid s 247(6)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(C) Settlement of Terms of Licence of Right/569. Commencement of proceedings.

569. Commencement of proceedings.

Proceedings¹ in respect of an application² to the comptroller³:

- 257 (1) to settle⁴ the terms of a licence available⁵ as of right⁶; or
- 258 (2) to settle⁷ the terms of a licence available as of right in respect of a design recorded or embodied in a design document or model before 1 August 1989⁸; or
- 259 (3) brought⁹ to adjust the terms of a licence granted before 1 August 1989 in respect of a design referred to in head (2) above¹⁰,

must be commenced by the service¹¹ by the applicant¹² on the comptroller of a notice in the prescribed form¹³.

There must be served with the notice a statement in duplicate setting out:

- 260 (a) in the case of an application referred to in head (1) or head (2) above, the terms of the licence which the applicant requires the comptroller to settle and, unless the application is one where the design right owner is unknown¹⁴, the name and address of the owner of the design right or, as the case may be, the copyright owner of the design¹⁵;
- 261 (b) in the case of an application referred to in head (3) above, the date and terms of the licence and the grounds on which the applicant requires the comptroller to adjust those terms and the name and address of the grantor of the licence¹⁶.

Within 14 days¹⁷ of the receipt of the notice, the comptroller must send a copy of it, together with a copy of the applicant's statement, to the person ('the respondent') shown in the application as the design right owner, copyright owner or grantor of the licence, as appropriate¹⁸. Within six weeks of the receipt by him of the notice so sent, the respondent must, if he does not agree to the terms of the licence required by the applicant to be settled or, as the case may be, adjusted, serve a notice of objection on the comptroller with a statement setting out the grounds of his objection and at the same time must serve a copy of the same on the applicant¹⁹. Within four weeks of the receipt of the notice of objection, the applicant may serve on the comptroller a counter-statement and at the same time serve a copy of it on the respondent²⁰. No amended statement or further statement may be served by either party except by leave or direction of the comptroller²¹.

1 For the meaning of 'proceedings' see PARA 561 note 1 ante.

2 For the meaning of 'application' see PARA 561 note 1 ante.

3 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

4 ie under the Copyright, Designs and Patents Act 1988 s 247: see PARA 568 ante.

5 ie by virtue of ibid s 237 (see PARA 548 ante) or under an order under s 238 (as amended) (see PARA 549 ante).

- 6 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 10(1)(a).
- 7 le under the Copyright, Designs and Patents Act 1988 s 170, Sch 1 para 19(2): see PARA 204 ante.
- 8 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 10(1)(b).
- 9 le by virtue of the Copyright, Designs and Patents Act 1988 Sch 1 para 19(5): see PARA 204 ante.
- 10 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 10(1)(c).
- 11 As to the service of documents see PARA 582 post.
- 12 For the meaning of 'applicant' see PARA 561 note 5 ante.
- 13 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 10(1). For the prescribed form of notice see r 10(1), Sch 1 Form 3; and for the prescribed fee payable on an application under r 10(1) see r 24, Sch 2 para 3 (substituted by SI 1992/615). As to the use of forms see PARA 583 post. As to the rectification of irregularities in procedure see PARA 577 post.
- 14 le an application to which the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 13 relates: see PARA 573 post. For the meaning of 'design right' see PARA 501 ante. As to who is the first owner of design right see PARA 518 ante.
- 15 Ibid r 10(2)(a). As to the ownership of copyright see PARA 118 et seq ante. For the meaning of 'copyright' see PARA 57 ante.
- 16 Ibid r 10(2)(b).
- 17 As to time limits see PARA 580 post.
- 18 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 10(3).
- 19 Ibid r 10(4).
- 20 Ibid r 10(5).
- 21 Ibid r 10(6). As to the comptroller's directions see PARA 570 post.

UPDATE

569 Commencement of proceedings

NOTE 13--SI 1989/1130 Sch 1 Form 3 amended: SI 2009/546.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(C) Settlement of Terms of Licence of Right/570. Directions, procedure and evidence.

570. Directions, procedure and evidence.

The provisions relating to:

- 262 (1) directions by the comptroller¹;
- 263 (2) procedure and evidence at the hearing²;
- 264 (3) representation and rights of audience³; and
- 265 (4) withdrawal of a reference⁴,

apply in respect of proceedings⁵ relating to an application to settle the terms of a licence of right or to adjust the terms of a licence⁶ as they apply in respect of proceedings⁷ in respect of a dispute⁸.

1 Ie the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 4 (as amended): see PARA 562 ante. For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 Ie ibid r 5: see PARA 563 ante.

3 Ie ibid r 6: see PARA 564 ante.

4 Ie ibid r 8: see PARA 566 ante.

5 For the meaning of 'proceedings' see PARA 561 note 1 ante.

6 Ie proceedings under the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 10: see PARA 569 ante.

7 Ie proceedings under ibid r 3: see PARA 561 ante.

8 Ibid r 11.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(C) Settlement of Terms of Licence of Right/571. Decision of the comptroller.

571. Decision of the comptroller.

After hearing the party or parties desiring to be heard, or, if none of the parties so desires, then without a hearing, the comptroller¹ must decide the application² and notify his decision to the parties, giving written³ reasons for his decision if so required by any party⁴.

1 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 For the meaning of 'application' see PARA 561 note 1 ante.

3 For the meaning of 'written' see PARA 522 note 7 ante.

4 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 12. As to appeals from the comptroller's decision see PARA 584 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(D) Settlement of Terms where Design Right Owner Unknown/572. Settlement of terms where design right owner unknown.

(D) SETTLEMENT OF TERMS WHERE DESIGN RIGHT OWNER UNKNOWN

572. Settlement of terms where design right owner unknown.

Where a person making an application for the settlement of the terms of a licence of right¹ is unable on reasonable inquiry to discover the identity of the design right owner², the comptroller³ may, in settling the terms of the licence, order that the licence be free of any obligation as to royalties or other payments⁴. If such an order is made, the design right owner may apply to the comptroller to vary the terms of the licence with effect from the date on which his application is made⁵.

If the terms of a licence are settled by the comptroller and it is subsequently established that a licence was not available as of right, the licensee is not liable in damages for, or for an account of profits in respect of, anything done before he was aware of any claim by the design right owner that a licence was not available⁶.

1 Ie under the Copyright, Designs and Patents Act 1988 s 247: see PARA 568 ante.

2 Ibid s 248(1). For the meaning of 'design right' see PARA 501 ante. As to who is the first owner of design right see PARA 518 ante. As to the procedure in such cases see PARA 573 post.

3 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

4 Copyright, Designs and Patents Act 1988 s 248(2).

5 Ibid s 248(3).

6 Ibid s 248(4). As to damages and accounts for profits see PARA 530 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(D) Settlement of Terms where Design Right Owner Unknown/573. Procedure and decision of the Tribunal.

573. Procedure and decision of the Tribunal.

Where a person making an application to settle the terms of a licence available as of right¹ is unable, after making such inquiries as he considers reasonable, to discover the identity of the design right owner², he must serve with his notice³ a statement to that effect, setting out particulars of the inquiries made by him as to the identity of the owner of the right and the result of those inquiries⁴. The comptroller⁵ may require the applicant⁶ to make such further inquiries into the identity of the owner of the right as he thinks fit and, may for that purpose, require him to publish in such a manner as the comptroller considers appropriate particulars of the application⁷.

Upon being satisfied from the applicant's statement or the further inquiries made⁸ that the identity of the owner of the right cannot be discovered, the comptroller must consider the application and settle the terms of the licence⁹.

¹ I.e. under the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 10(1)(a) or (b): see PARA 569 ante.

² As to who is the first owner of design right see PARA 518 ante. For the meaning of 'design right' see PARA 501 ante.

³ I.e. his notice under the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 10. As to the service of documents see PARA 582 post.

⁴ Ibid r 13(1). As to the rectification of irregularities in procedure see PARA 577 post.

⁵ For the meaning of 'the comptroller' see PARA 548 note 5 ante.

⁶ For the meaning of 'applicant' see PARA 561 note 5 ante.

⁷ Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 13(2).

⁸ I.e. under ibid r 13(2): see the text to notes 5-8 supra.

⁹ Ibid r 13(3). As to the procedure see PARA 570 ante. As to applications by the design right owner to vary the terms of the licence see PARA 574 et seq post. As to appeals from the comptroller's decision see PARA 584 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(E) Application by Design Right Owner to vary Terms of Licence/574. Commencement of proceedings.

(E) APPLICATION BY DESIGN RIGHT OWNER TO VARY TERMS OF LICENCE

574. Commencement of proceedings.

Where the comptroller¹ has, in settling the terms of the licence where the design right owner is unknown², ordered that the licence be free of any obligation as to royalties or other payments, the design right owner may serve³ on the comptroller a notice in the prescribed form⁴ applying for the terms of the licence to be varied from the date of his application⁵. There must be served with the notice a statement in duplicate setting out the particulars of the grounds for variation and the terms required to be varied⁶.

Within 14 days⁷ of the receipt of the notice, the comptroller must send a copy of the notice, together with the design right owner's statement, to the applicant⁸ ('the licensee')⁹. The licensee must, if he does not agree to the terms as required to be varied by the design right owner, within six weeks of the receipt of the notice serve notice of objection on the comptroller with a statement setting out the grounds of his objection, and at the same time he must serve a copy on the design right owner¹⁰. Within four weeks of the receipt of the notice of objection, the design right owner may serve on the comptroller a counter-statement, and at the same time he must serve a copy of it on the licensee¹¹. No amended statement or further statement may be served by either party except by leave or direction of the comptroller¹².

1 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 I.e. under the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 13: see PARA 573 ante. For the meaning of 'design right' see PARA 501 ante. As to who is the first owner of design right see PARA 518 ante.

3 As to the service of documents see PARA 582 post.

4 For the prescribed form of notice see the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 14(1), Sch 1 Form 4. As to the use of forms see PARA 583 post.

5 Ibid r 14(1). For the prescribed fee payable on an application under r 14(1) see r 24, Sch 2 para 4 (substituted by SI 1992/615). As to the procedure on such applications see PARA 575 post.

6 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 14(1).

7 As to time limits see PARA 580 post.

8 I.e. the applicant under the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 10: see PARA 569 ante.

9 Ibid r 14(2).

10 Ibid r 14(3).

11 Ibid r 14(4).

12 Ibid r 14(5). As to the comptroller's directions see PARA 575 post.

UPDATE

574 Commencement of proceedings

NOTE 4--SI 1989/1130 Sch 1 Form 4 amended: SI 2009/546.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(E) Application by Design Right Owner to vary Terms of Licence/575. Directions, procedure and evidence.

575. Directions, procedure and evidence.

The provisions relating to:

- 266 (1) directions by the comptroller¹;
- 267 (2) procedure and evidence at the hearing²;
- 268 (3) representation and rights of audience³; and
- 269 (4) withdrawal of a reference⁴,

apply in respect of proceedings⁵ relating to an application by the design right owner to vary the terms of a licence as they apply in respect of proceedings⁶ in respect of a dispute⁷.

1 le the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 4 (as amended): see PARA 562 ante. For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 le ibid r 5: see PARA 563 ante.

3 le ibid r 6: see PARA 564 ante.

4 le ibid r 8: see PARA 566 ante.

5 le proceedings under ibid r 14: see PARA 574 ante. For the meaning of 'proceedings' see PARA 561 note 1 ante.

6 le proceedings under ibid r 3: see PARA 561 ante.

7 Ibid r 15.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(E) Application by Design Right Owner to vary Terms of Licence/576. Decision of the comptroller.

576. Decision of the comptroller.

After hearing the party or parties desiring to be heard, or, if none of the parties so desires, then without a hearing¹, the comptroller² must decide the application³ and notify his decision to the parties, giving written⁴ reasons for his decision if so required by any party⁵.

1 As to the procedure see PARA 575 ante.

2 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

3 For the meaning of 'application' see PARA 561 note 1 ante.

4 For the meaning of 'written' see PARA 522 note 7 ante.

5 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 16.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(F) Miscellaneous Procedural Matters/577. Rectification of irregularities.

(F) MISCELLANEOUS PROCEDURAL MATTERS

577. Rectification of irregularities.

Any document filed in any proceedings¹ may, if the comptroller² thinks fit, be amended; and any irregularity in procedure may be rectified by the comptroller on such terms as he may direct³.

1 For the meaning of 'proceedings' see PARA 561 note 1 ante.

2 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

3 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 17.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(F) Miscellaneous Procedural Matters/578. Evidence.

578. Evidence.

Any statutory declaration¹ or affidavit² filed in any proceedings³ must be made and subscribed as follows:

- 270 (1) in the United Kingdom⁴, before any justice of the peace or any commissioner or other officer authorised by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceedings⁵;
- 271 (2) in any other part of Her Majesty's dominions or in the Republic of Ireland, before any court, judge, justice of the peace or any officer authorised by law to administer an oath there for the purpose of any legal proceedings⁶; and
- 272 (3) elsewhere, before a British minister, or person exercising the functions of a British minister, or a consul, vice-consul or other person exercising the functions of a British consul or before a notary public, judge or magistrate⁷.

Any document purporting to have fixed, impressed or subscribed thereto or thereon the seal or signature of any person so authorised to take a declaration may be admitted by the comptroller⁸ without proof of the genuineness of the seal or signature or of the official character of the person or his authority to take the declaration⁹.

Any witness statement¹⁰ must be a written¹¹ statement signed and dated by a person which contains the evidence which the person signing it would be allowed to give orally¹², and must include a statement by the intended witness that he believes the facts in it are true¹³.

The comptroller has, in relation to the giving of evidence (including evidence on oath, the attendance of witnesses and the disclosure and production of documents), all the powers of a judge of the High Court, other than the power to punish summarily for contempt of court¹⁴.

1 As to statutory declarations see the Statutory Declarations Act 1835 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1024.

2 As to affidavits see CIVIL PROCEDURE vol 11 (2009) PARA 989 et seq.

3 For the meaning of 'proceedings' see PARA 561 note 1 ante.

4 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

5 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 18(1)(a). As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq. As to the administration of oaths see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

6 Ibid r 18(1)(b).

7 Ibid r 18(1)(c).

8 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

9 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 18(2).

10 Ie filed under the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130 (as amended).

11 For the meaning of 'written' see PARA 522 note 7 ante.

12 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 18A(a) (r 18A added by SI 1999/3195).

13 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 18A(b) (as added: see note 12 *supra*).

14 *Ibid* r 18(3). As to the powers of a judge in relation to the giving of evidence see CIVIL PROCEDURE vol 11 (2009) PARA 791 et seq.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(F) Miscellaneous Procedural Matters/579. Appointment of advisers.

579. Appointment of advisers.

The comptroller¹ may appoint an adviser to assist him in any proceedings² and must settle the question or instructions to be submitted or given to such an adviser³.

1 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 For the meaning of 'proceedings' see PARA 561 note 1 ante.

3 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 19. As to the remuneration of such advisers see PARA 558 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(F) Miscellaneous Procedural Matters/580. Time.

580. Time.

The times or periods prescribed¹ for doing any act or taking any proceedings² may be extended or shortened by the comptroller³ if he thinks fit, upon such notice and upon such terms as he may direct; and an extension may be granted although the time for doing such act or taking such proceedings has already expired⁴.

Where the last day for the doing of any act falls on a day on which the Patent Office⁵ is closed and by reason thereof the act cannot be done on that day, it may be done on the next day on which the Patent Office is open⁶. For these purposes⁷, the Patent Office must be open Monday to Friday⁸ between 9.00 am and midnight for the filing of applications, forms and other documents⁹, and between 9.00 am and 5.00 pm for all other purposes¹⁰.

1 Ie by the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130 (as amended).

2 Ie any proceedings under the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130 (as amended). For the meaning of 'proceedings' see PARA 561 note 1 ante.

3 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

4 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 20(1) (substituted by SI 1999/3195).

5 As to the Patent Office see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 575 et seq.

6 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 20(2).

7 Ie for the purposes of the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130 (as amended).

8 Ie excluding Good Friday, Christmas Day and any day specified or proclaimed to be a bank holiday under the Banking and Financial Dealings Act 1971 s 1 (see TIME vol 97 (2010) PARA 321): Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 21.

9 Ibid r 21(a) (r 21(a), (b) amended by SI 1999/3195).

10 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 21(b) (as amended: see note 9 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(F) Miscellaneous Procedural Matters/581. Costs.

581. Costs.

The comptroller¹ may, in respect of any proceedings², by order award such costs as he considers reasonable; and he may direct how, to what party and from what parties they are to be paid³.

Where any applicant⁴ or a person making an application⁵ to be made a party to proceedings neither resides⁶ nor carries on business⁷ in the United Kingdom⁸ or another member state of the European Union, the comptroller may require him to give security for the costs or expenses of the proceedings and, in default of such security being given, may treat the reference or application as abandoned⁹.

1 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 For the meaning of 'proceedings' see PARA 561 note 1 ante.

3 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 22(1).

4 For the meaning of 'applicant' see PARA 561 note 5 ante.

5 le under the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 7: see PARA 565 ante.

6 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

7 For the meaning of 'business' see PARA 511 note 4 ante.

8 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

9 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 22(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(F) Miscellaneous Procedural Matters/582. Service; translation of documents.

582. Service; translation of documents.

Every person concerned in any proceedings¹ must furnish to the comptroller² an address for service, and that address may be treated for all purposes connected with such proceedings as the address of the person concerned³. The address for service must be an address in the United Kingdom⁴, unless in a particular case the comptroller otherwise directs⁵.

Where any document or part of a document which is in a language other than English is⁶ served on the comptroller or any party to proceedings or filed with the comptroller, it must be accompanied by a translation into English of the document or part, verified to the satisfaction of the comptroller as corresponding to the original text⁷.

1 In any proceedings to which the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130 (as amended) relate. For the meaning of 'proceedings' see PARA 561 note 1 ante.

2 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

3 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 23(1) (amended by SI 2006/760).

4 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

5 Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130, r 23(1A) (added by SI 2006/760).

6 In pursuance of the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130 (as amended).

7 Ibid r 23(2).

UPDATE

582 Service; translation of documents

TEXT AND NOTE 5--The address for service must now be an address in the United Kingdom, another EEA state or the Channel Islands: SI 1989/1130 r 23(1A) (substituted by SI 2009/546).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(F) Miscellaneous Procedural Matters/583. Use of forms.

583. Use of forms.

A requirement¹ to use a prescribed form² is satisfied by the use either of a replica of that form or of a form which contains the information required by the form and which is acceptable to the comptroller³.

1 Ie under the Design Right (Proceedings before Comptroller) Rules 1989, SI 1989/1130 (as amended).

2 Ie a form set out in *ibid* reg 2(2), Sch 1: see PARAS 561, 565, 569, 574 ante.

3 *Ibid* reg 2(2). For the meaning of 'the comptroller' see PARA 548 note 5 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/B. JURISDICTION OF THE COMPTROLLER/(G) Appeals/584. Appeals as to terms of licence of right.

(G) APPEALS

584. Appeals as to terms of licence of right.

An appeal lies from any decision of the comptroller¹ relating to the settlement of the terms of a licence of right² to the Registered Designs Appeal Tribunal constituted³ under the Registered Designs Act 1949⁴.

1 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

2 Ie any decision under the Copyright, Designs and Patents Act 1988 s 247 (see PARA 568 ante) or s 248 (see PARA 572 ante).

3 Ie under the Registered Designs Act 1949 s 28 (as amended): see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 692. Section 28 (as amended) applies to appeals from the comptroller under the Copyright, Designs and Patents Act 1988 s 249 as it applies to appeals from the registrar under the Registered Designs Act 1949; but rules made under s 28 (as amended) may make different provision for appeals under the Copyright, Designs and Patents Act 1988 s 249: s 249(2). As to such rules and the procedure on appeal to the Tribunal see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 693.

4 Ibid s 249(1).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/C. JURISDICTION OF THE HIGH COURT/585. In general.

C. JURISDICTION OF THE HIGH COURT

585. In general.

Save for certain matters in relation to disputes concerning design right¹ which are within the sole jurisdiction of the comptroller², the High Court has the same jurisdiction in relation to matters involving design right as it does in relation to matters involving copyright³. In addition, the High Court has jurisdiction over the following matters:

- 273 (1) the settlement of terms for Crown use⁴;
- 274 (2) disputes concerning the rights of third parties in cases of Crown use⁵;
- 275 (3) disputes as to compensation for loss of profit in cases of Crown use⁶;
- 276 (4) references from the comptroller of matters within his sole jurisdiction⁷;
- 277 (5) appeals from any decision of the comptroller in relation to such matters⁸.

All design right matters are assigned to the Chancery Division⁹.

1 For the meaning of 'design right' see PARA 501 ante.

2 As to which matters are within the sole jurisdiction of the comptroller see PARA 560 ante. For the meaning of 'the comptroller' see PARA 548 note 5 ante.

3 As to the court's jurisdiction in relation to copyright see PARA 427 ante. The powers of the court include making an order for the delivery up of infringing articles under the Copyright, Designs and Patents Act 1988 ss 230, 235(5) (see PARA 534 ante) and for their disposal under s 231 (see PARA 535 ante).

4 See PARAS 554 ante, 587 post.

5 See PARAS 555 ante, 587 post.

6 See PARAS 557 ante, 587 post.

7 See PARA 586 post.

8 See PARA 586 post.

9 See the Supreme Court Act 1981 s 61(1), (3), Sch 1 para 1(i) (amended by the Copyright, Designs and Patents Act 1988 s 303(1), Sch 7 para 28(1), (3)). As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed.

See also *Apac Rowena Ltd v Norpol Packaging Ltd* [1991] 4 All ER 516, [1991] FSR 273; *CHC Software Care Ltd v Hopkins and Wood* [1993] FSR 241; and see CIVIL PROCEDURE.

UPDATE

585 In general

NOTE 9--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/C. JURISDICTION OF THE HIGH COURT/586. References and appeals on design right matters.

586. References and appeals on design right matters.

In any proceedings before him on a reference of a matter relating to design right¹, the comptroller² may at any time order the whole proceedings or any question or issue, whether of fact or law, to be referred, on such terms as he may direct, to the High Court³. The comptroller must make such an order if the parties to the proceedings agree that he should do so⁴. On such a reference, the court may exercise any power available to the comptroller as respects the matter referred to it and, following its determination, may refer any matter back to the comptroller⁵.

An appeal lies from any decision of the comptroller in proceedings before him in respect of a matter relating to design right⁶ to the High Court⁷.

1 Ie a reference under the Copyright, Designs and Patents Act 1988 s 246: see PARA 560 ante. For the meaning of 'design right' see PARA 501 ante.

2 For the meaning of 'the comptroller' see PARA 548 note 5 ante.

3 Copyright, Designs and Patents Act 1988 s 251(1).

4 Ibid s 251(2).

5 Ibid s 251(3).

6 Ie under ibid s 246: see PARA 560 ante.

7 Ibid s 251(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/C. JURISDICTION OF THE HIGH COURT/587. Reference of disputes relating to Crown use.

587. Reference of disputes relating to Crown use.

A dispute as to any matter which falls to be determined by the court¹ in default of agreement under:

- 278 (1) the provisions² relating to the settlement of terms for Crown use³;
- 279 (2) the provisions⁴ relating to the rights of third parties in case of Crown use⁵; or
- 280 (3) the provisions⁶ relating to compensation for loss of profit on Crown use⁷,

may be referred to the court by any party to the dispute⁸.

In determining a dispute between a government department⁹ and any person as to the terms for Crown use of a design¹⁰, the court must have regard to:

- 281 (a) any sums which that person or a person from whom he derives title has received or is entitled to receive, directly or indirectly, from any government department in respect of the design¹¹; and
- 282 (b) whether that person or a person from whom he derives title has in the court's opinion without reasonable cause failed to comply with a request of the department for the use of the design on reasonable terms¹².

One of two or more joint owners of design right¹³ may, without the concurrence of the others, refer a dispute to the court under these provisions, but may not do so unless the others are made parties; and none of those others is liable for any costs unless he takes part in the proceedings¹⁴.

Where the consent of an exclusive licensee¹⁵ is required¹⁶ to the settlement by agreement of the terms for Crown use of a design, a determination by the court of the amount of any payment to be made for such use is of no effect unless the licensee has been notified of the reference and given an opportunity to be heard¹⁷. On the reference of a dispute as to the amount recoverable by an exclusive licensee¹⁸, the court must determine what is just having regard to any expenditure incurred by the licensee in developing the design or in making payments to the design right owner in consideration of the licence, other than royalties or other payments determined by reference to the use of the design¹⁹.

1 'The court' means the High Court or any patents county court having jurisdiction by virtue of an order under the Copyright, Designs and Patents Act 1988 s 287 (see PARA 588 post; and PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 644): s 252(6)(a).

2 *Ibid* s 241: see PARA 554 ante.

3 *Ibid* s 252(1)(a). For the meaning of 'Crown use' see PARA 552 note 7 ante.

4 *Ibid* s 242: see PARA 555 ante.

5 *Ibid* s 252(1)(b).

6 *Ibid* s 243: see PARA 557 ante.

- 7 Ibid s 252(1)(c).
- 8 Ibid s 252(1).
- 9 For the meaning of 'government department' see PARA 552 note 1 ante.
- 10 For the meaning of 'design' see PARA 505 ante.
- 11 Copyright, Designs and Patents Act 1988 s 252(2)(a).
- 12 Ibid s 252(2)(b).
- 13 For the meaning of 'design right' see PARA 501 ante. As to who is the first owner of design right see PARA 518 ante.
- 14 Copyright, Designs and Patents Act 1988 s 252(3).
- 15 'Exclusive licensee' is not defined, but for the meaning of 'exclusive licence' see PARA 525 ante.
- 16 Ie by the Copyright, Designs and Patents Act 1988 s 242(3)(a)(i): see PARA 555 ante.
- 17 Ibid s 252(4).
- 18 Ie the amount recoverable as mentioned in ibid s 242(3)(a)(ii): see PARA 555 ante.
- 19 Ibid s 252(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/D. PATENTS COUNTY COURT/588. Special jurisdiction.

D. PATENTS COUNTY COURT

588. Special jurisdiction.

A patents county court¹ has special jurisdiction² to hear and determine any claim or matter relating to patents or designs over which the High Court has jurisdiction³, together with any claims or matters ancillary to, or arising out of the same subject matter as, such proceedings, other than appeals from the comptroller⁴. It has power to grant both search orders and freezing injunctions⁵. Thus a patents county court may hear and determine claims and counterclaims for infringement of design right⁶, declarations of non-infringement of design right, disputes as to Crown use of design right⁷, unjustified threats of proceedings for infringement of design right⁸ and references from the comptroller⁹.

1 I.e. a county court designated as a patents county court under the Copyright, Designs and Patents Act 1988 s 287: see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 644. The only county court designated as a patents county court is the Central London County Court: see the Patents County Court (Designation and Jurisdiction) Order 1994, SI 1994/1609, art 2.

2 I.e. the jurisdiction conferred by the Copyright, Designs and Patents Act 1988 s 287(1) and the Patents County Court (Designation and Jurisdiction) Order 1994, SI 1994/1609, arts 3, 4 (as amended): see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 644.

3 As to the jurisdiction of the High Court see PARAS 585-587 ante.

4 See the Copyright, Designs and Patents Act 1988 s 287(1); the Patents County Court (Designation and Jurisdiction) Order 1994, SI 1994/1609, arts 3, 4 (art 3 amended by SI 2005/587); and PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 644. For the meaning of 'the comptroller' see PARA 548 note 5 ante.

5 See the County Court Remedies Regulations 1991, SI 1991/1222, regs 2, 3(2)(b). As to freezing injunctions see CIVIL PROCEDURE vol 11 (2009) PARA 396 et seq.

6 As to proceedings for infringement of design right see PARA 530 et seq ante. For the meaning of 'design right' see PARA 501 ante.

7 As to Crown use see PARA 552 et seq ante. For the meaning of 'Crown use' see PARA 552 note 7 ante.

8 As to proceedings in respect of threats see PARA 538 et seq ante.

9 I.e. under the Copyright, Designs and Patents Act 1988 s 251: see PARA 586 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(1) DESIGN RIGHT IN ORIGINAL DESIGNS/(x) Jurisdiction of the Comptroller and the Court/E. COUNTY COURTS/589. Jurisdiction of county courts.

E. COUNTY COURTS

589. Jurisdiction of county courts.

A county court may entertain proceedings for:

- 283 (1) an order for delivery up¹;
- 284 (2) an order as to the disposal of an infringing article etc²; or
- 285 (3) an application³ by an exclusive licensee having concurrent rights⁴,

whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings⁵.

Nothing in these provisions is to be construed as affecting the jurisdiction of the High Court⁶.

1 Ie an order under the Copyright, Designs and Patents Act 1988 s 230: see PARA 534 ante.

2 Ie an order under *ibid* s 231: see PARA 535 ante.

3 Ie an application under *ibid* s 235(5): see PARA 534 ante.

4 *Ibid* s 232(1).

5 See the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(n).

6 Copyright, Designs and Patents Act 1988 s 232(3). As to the jurisdiction of the High Court see PARA 585 et seq ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(i) In general/590. In general.

(2) SEMICONDUCTOR TOPOGRAPHIES

(i) In general

590. In general.

European Union member states were required¹ to give legal protection to semiconductor topographies²; and effect was given to that requirement by the Semiconductor Products (Protection of Topography) Regulations 1987³. Consequent on the creation of design right by the Copyright, Designs and Patents Act 1988⁴, the Semiconductor Products (Protection of Topography) Regulations 1987 were revoked and replaced on 1 August 1989⁵ by the Design Right (Semiconductor Topographies) Regulations 1989⁶ under which semiconductor topographies are now protected in much the same way as are unregistered designs under the provisions of the Copyright, Designs and Patents Act 1988 relating to design right, but subject to certain modifications as to the definition of qualifying persons and countries⁷, works created pursuant to a commission⁸, the definition of and qualification by reference to first marketing⁹, first ownership¹⁰, duration¹¹, the scope of infringement¹² and the definition of infringing articles¹³, and licences of right¹⁴.

1 See EC Council Directive 87/54 (OJ L24, 27.1.87, p 36).

2 For the meaning of 'semiconductor topography' see PARA 591 post.

3 Ie the Semiconductor Products (Protection of Topography) Regulations 1987, SI 1987/1497 (revoked). Before that date such topographies were protected because they were made from photographs produced from drawings which were protected as artistic works under the Copyright Act 1956 (repealed): see PARA 41 ante. The regulations created a topography right which was broadly similar to the copyright in an artistic work under the Act. The right expired ten years after the end of the calendar year in which the topography was first commercially exploited or, if it was not so exploited anywhere in the world within a period of 15 years from its creation, at the end of that period: see the Semiconductor Products (Protection of Topography) Regulations 1987, SI 1987/1497, reg 5 (revoked). The regulations apply to topographies created between 15 November 1987 and 1 August 1989, when the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100 (as amended) came into force: see the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, regs 1, 10. The Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100 (as amended) contain transitional provisions in respect of semiconductor topographies created before 1 August 1989: see reg 10.

4 Ie by the Copyright, Designs and Patents Act 1988 Pt III (ss 213-264) (as amended): see PARA 501 et seq ante.

5 Ie the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

6 Ie the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100 (as amended): see PARA 591 et seq post. Except where the context otherwise requires, the regulations are to be construed as one with the Copyright, Designs and Patents Act 1988 Pt III (as amended): Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 2(2). In its application to a design which is a semiconductor topography, the Copyright, Designs and Patents Act 1988 Pt III (as amended) has effect subject to the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, regs 4-9 (see PARA 592 et seq post): reg 3. For the meaning of 'design' see PARA 505 ante.

7 See PARA 592 et seq post.

8 See PARAS 595-596 post.

- 9 See PARA 597 post.
- 10 See PARA 598 post.
- 11 See PARA 599 post.
- 12 See PARAS 600-602 post.
- 13 See PARA 600 post.
- 14 See PARA 603 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(i) In general/591. Meaning of 'semiconductor topography'.

591. Meaning of 'semiconductor topography'.

'Semiconductor topography' means a design¹ which is a design of either of the following:

- 286 (1) the pattern fixed, or intended to be fixed, in or upon a layer of a semiconductor product or a layer of material in the course of and for the purpose of the manufacture of a semiconductor product; or
- 287 (2) the arrangement of the patterns fixed, or intended to be fixed, in or upon the layers of a semiconductor product in relation to one another².

'Semiconductor product' means an article the purpose, or one of the purposes, of which is the performance of an electronic function and which consists of two or more layers, at least one of which is composed of semiconducting material and in or upon one or more of which is fixed a pattern appertaining to that or another function³.

1 For the meaning of 'design' see PARA 505 ante.

2 Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 2(1).

3 Ibid reg 2(1).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(i) In general/592. Design right.

592. Design right.

In order for design right¹ to subsist, a semiconductor topography² design must, like all other designs, satisfy the requirement of originality³ and not fall within any of the statutory exclusions from protection⁴.

1 For the meaning of 'design right' see PARA 501 ante.

2 For the meaning of 'semiconductor topography' see PARA 591 ante.

3 As to originality see PARAS 506-507 ante.

4 As to the statutory exclusions from protection see PARA 509 ante. The Copyright, Designs and Patents Act 1988 s 213(3)(c) (see PARA 509 ante) which excludes surface decoration is not applicable because the topography patterns are not decoration.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(ii) Qualification for Protection/593. Qualification for protection.

(ii) Qualification for Protection

593. Qualification for protection.

Only certain semiconductor topography¹ designs qualify for protection². Whether they do so depends on the qualifying status of the designer³, the commissioner or employer⁴ or, in some cases, the person who first marketed the design⁵.

1 For the meaning of 'semiconductor topography' see PARA 591 ante.

2 The Copyright, Designs and Patents Act 1988 s 213(5) (see PARA 510 ante) has effect, subject to the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 4(2)-(4) (see PARAS 594-595 post): reg 4(1).

3 See PARA 595 post.

4 See PARA 596 post.

5 See PARA 597 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(ii) Qualification for Protection/594. Meanings of 'qualifying individual' and 'qualifying person'.

594. Meanings of 'qualifying individual' and 'qualifying person'.

In relation to semiconductor topographies¹, 'qualifying individual' means a citizen or subject of, or an individual habitually resident² in, a qualifying country³; and 'qualifying person' means a qualifying individual, a body corporate or other body having legal personality which has in any qualifying country or in Gibraltar a place of business⁴ at which substantial business activity is carried on, or a person who falls within one of certain additional specified classes⁵. The additional classes so specified are:

- 288 (1) British overseas territories citizens⁶;
- 289 (2) citizens and subjects of certain specified countries⁷;
- 290 (3) habitual residents of any country specified in head (2) above, the Isle of Man, the Channel Islands or any colony⁸;
- 291 (4) firms and bodies corporate formed under the law of, or of any part of, the United Kingdom, Gibraltar, another member state of the European Union or any country specified in head (2) above with a place of business within any country so specified at which substantial business activity is carried on⁹.

In determining for the purposes of the definition of 'qualifying person' whether substantial business activity is carried on at a place of business in any country, no account is to be taken of dealings in goods which are at all material times outside that country¹⁰.

References to a qualifying person include the Crown¹¹ and the government of any other qualifying country¹².

1 For the meaning of 'semiconductor topography' see PARA 591 ante.

2 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

3 Copyright, Designs and Patents Act 1988 s 217(1) (s 217 substituted by the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 4(2)). 'Qualifying country' means the United Kingdom or another member state of the European Union: Copyright, Designs and Patents Act 1988 s 217(3) (as so substituted). For the meaning of 'country' see PARA 502 note 11 ante. The reference in the definition of 'qualifying individual' to a person's being a citizen or subject of a qualifying country is to be construed, in relation to the United Kingdom, as a reference to his being a British citizen: s 217(4) (as so substituted). For the meaning of 'United Kingdom' see PARA 3 note 1 ante; and for the meaning of 'British citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

4 For the meaning of 'business' see PARA 511 note 4 ante.

5 Copyright, Designs and Patents Act 1988 s 217(1) (as substituted: see note 3 supra).

6 For the meaning of 'British overseas territories citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 44 et seq.

7 As to the specified countries see the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 4(2), Schedule Pt II (substituted by SI 1993/2497).

8 For the meaning of 'colony' see PARA 3 note 7 ante.

9 Copyright, Designs and Patents Act 1988 s 217(1) (as substituted: see note 3 supra); Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, Schedule Pts I, II (substituted by SI 1993/2497; and amended by virtue of the British Overseas Territories Act 2002 s 2(3)).

10 Copyright, Designs and Patents Act 1988 s 217(5) (as substituted: see note 3 supra).

11 For the meaning of 'the Crown' see PARA 511 note 7 ante.

12 Copyright, Designs and Patents Act 1988 s 217(2) (as substituted: see note 3 supra).

UPDATE

594 Meanings of 'qualifying individual' and 'qualifying person'

TEXT AND NOTES--SI 1989/1100 reg 4(2), Schedule substituted: SI 2006/1833. SI 1989/1100 Schedule amended: SI 2008/1434. The effect of this substitution is that, except for the definition of 'qualifying country', the provisions of the 1988 Act s 217 (see PARAS 511, 512) apply in relation to semiconductor typographies as they do to other types of design rights. In relation to semiconductor typographies, 'qualifying country' means (1) the United Kingdom; (2) another member state; (3) the Isle of Man, Gibraltar, the Channel Islands or any colony; (4) a country listed in SI 1989/1100 Schedule: 1998 Act s 217(3) (substituted by SI 1989/1100 reg 4(2) (as so substituted)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(ii) Qualification for Protection/595. Qualification by reference to the designer.

595. Qualification by reference to the designer.

Where a semiconductor topography¹ design has not been created pursuant to a commission² or in the course of employment³ or, where it has been created in such circumstances but there is an agreement whereby the designer⁴ is the first owner of the design right⁵, it qualifies for design right protection if the designer is a qualifying individual⁶ or, in the case of a computer-generated⁷ design, is a qualifying person⁸.

A joint design⁹ created in such circumstances qualifies for design right protection if any of the designers is a qualifying individual or, as the case may be, a qualifying person¹⁰.

1 For the meaning of 'semiconductor topography' see PARA 591 ante.

2 For the meaning of 'commission' see PARA 510 note 5 ante.

3 For the meaning of 'employment' see PARA 510 note 6 ante.

4 For the meaning of 'designer' see PARA 506 ante.

5 Normally the commissioner or the employer is the first owner of design right but this is subject to any agreement in writing to the contrary: see the Copyright, Designs and Patents Act 1988 s 215 (as substituted); and PARA 598 post. For the meaning of 'design right' see PARA 501 ante.

6 For the meaning of 'qualifying individual' see PARA 594 ante.

7 For the meaning of 'computer-generated' see PARA 96 note 18 ante.

8 Copyright, Designs and Patents Act 1988 s 218(2) (s 218(2), (3) amended by the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 4(3)). For the meaning of 'qualifying person' see PARA 594 ante.

9 For the meaning of 'joint design' see PARA 517 ante.

10 Copyright, Designs and Patents Act 1988 s 218(3) (as amended: see note 8 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(ii) Qualification for Protection/596. Qualification by reference to the commissioner or employer.

596. Qualification by reference to the commissioner or employer.

A semiconductor topography¹ design qualifies for design right² protection if it is created in pursuance of a commission³ from, or in the course of employment⁴ with, a qualifying person⁵.

In the case of a joint commission or joint employment a design qualifies for design right protection if any of the commissioners or employers⁶ is a qualifying person⁷.

1 For the meaning of 'semiconductor topography' see PARA 591 ante.

2 For the meaning of 'design right' see PARA 501 ante.

3 For the meaning of 'commission' see PARA 510 note 5 ante.

4 For the meaning of 'employment' see PARA 510 note 6 ante.

5 Copyright, Designs and Patents Act 1988 s 219(1). For the meaning of 'qualifying person' see PARA 594 ante. Where a semiconductor topography is created in pursuance of a commission or in the course of employment and the designer of the topography is, by virtue of s 215 (as substituted) (see PARA 598 post), the first owner of design right in that topography, then s 219 does not apply and the provisions of s 218(2)-(4) (see PARA 595 ante) apply to the topography as if it had not been created in pursuance of a commission or in the course of employment: Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 4(3). For the meaning of 'designer' see PARA 506 ante.

6 For the meaning of 'employer' see PARA 510 note 6 ante.

7 Copyright, Designs and Patents Act 1988 s 219(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(ii) Qualification for Protection/597. Qualification by reference to first marketing.

597. Qualification by reference to first marketing.

A semiconductor topography¹ design which does not qualify for design right² protection by reference to the designer³ or, as the case may be, the commissioner or employer⁴ qualifies for design right protection if the first marketing⁵ of articles made to the design:

- 292 (1) is by a qualifying person⁶ who is exclusively authorised⁷ to put such articles on the market in every member state of the European Union; and
- 293 (2) takes place within the territory of any member state⁸.

If the first marketing of articles made to the design is done jointly by two or more persons, the design qualifies for design right protection if any of those persons meets the requirements in head (1) above⁹.

1 For the meaning of 'semiconductor topography' see PARA 591 ante.

2 For the meaning of 'design right' see PARA 501 ante.

3 Ie under the Copyright, Designs and Patents Act 1988 s 218: see PARA 595 ante. For the meaning of 'designer' see PARA 506 ante.

4 Ie under ibid s 219 (as amended) or under the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 4(3): see PARA 596 ante. For the meaning of 'commissioner' see PARA 510 note 5 ante; and for the meaning of 'employer' see PARA 510 note 6 ante.

5 References to 'marketing', in relation to an article or a semiconductor topography, are references to its being sold or let for hire, or offered or exposed for sale or hire, in the course of a business, and related expressions are to be construed accordingly; but no account is to be taken of marketing which is merely colourable and not intended to satisfy the reasonable requirements of the public: Copyright, Designs and Patents Act 1988 s 263(2) (amended by the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 6(2)). For the meaning of 'business' see PARA 511 note 4 ante. In determining, for the purposes of the Copyright, Designs and Patents Act 1988 s 215(4) (as substituted) (see PARA 598 post), s 216 (see PARA 599 post), or s 220 (as amended), whether there has been any marketing, or anything has been made available for sale or hire, no account is to be taken of any sale or hire, or any offer or exposure for sale or hire, which is subject to an obligation of confidence in respect of information about the semiconductor topography in question unless either: (1) the article or semiconductor topography sold or hired or offered or exposed for sale or hire has been sold or hired on a previous occasion, whether or not subject to an obligation of confidence; or (2) the obligation is imposed at the behest of the Crown, or of the government of any country outside the United Kingdom, for the protection of security in connection with the production of arms, munitions or war material: Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 7. For the meaning of 'the Crown' see PARA 511 note 7 ante; for the meaning of 'country' see PARA 502 note 11 ante; and for the meaning of 'United Kingdom' see PARA 3 note 1 ante.

6 For the meaning of 'qualifying person' see PARA 594 ante.

7 'Exclusively authorised' refers: (1) to authorisation by the person who would have been first owner of design right as designer, commissioner of the design or employer of the designer if he had been a qualifying person, or by a person lawfully claiming under such a person; and (2) to exclusivity capable of being enforced by legal proceedings: Copyright, Designs and Patents Act 1988 s 220(4) (amended by the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 4(4)).

8 Copyright, Designs and Patents Act 1988 s 220(1) (substituted by the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 4(4)).

9 Copyright, Designs and Patents Act 1988 s 220(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(iii) Ownership/598. Ownership of design right.

(iii) Ownership

598. Ownership of design right.

The designer¹ is the first owner of any design right² in a semiconductor topography³ design which is not created in pursuance of a commission⁴ or in the course of employment⁵.

Where such a design is created in pursuance of a commission, the person commissioning the design is the first owner of any design right in it, subject to any agreement in writing⁶ to the contrary⁷. Where, in the case of a semiconductor topography design not being a commissioned design⁸, a design is created by an employee⁹ in the course of his employment, his employer¹⁰ is the first owner of any design right in the design, subject to any agreement in writing to the contrary¹¹.

If such a design qualifies for design right protection only by reference to its first marketing¹², the above provisions do not apply and the person by whom the articles in question are marketed is¹³ the first owner of the design right¹⁴.

1 For the meaning of 'designer' see PARA 506 ante.

2 For the meaning of 'design right' see PARA 501 ante.

3 For the meaning of 'semiconductor topography' see PARA 591 ante.

4 For the meaning of 'commission' see PARA 510 note 5 ante.

5 Copyright, Designs and Patents Act 1988 s 215(1) (s 215 substituted by the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 5). For the meaning of 'employment' see PARA 510 note 6 ante.

6 For the meaning of 'writing' see PARA 522 note 7 ante.

7 Copyright, Designs and Patents Act 1988 s 215(2) (as substituted: see note 5 supra). See *Ultraframe (UK) Ltd v Fielding* [2003] EWCA Civ 1805, [2004] RPC 479, [2003] All ER (D) 232 (Dec); and PARA 518 note 6 ante.

8 Ie in a case not falling within the Copyright, Designs and Patents Act 1988 s 215(2) (as substituted): see the text to notes 6-7 supra.

9 For the meaning of 'employee' see PARA 510 note 6 ante.

10 For the meaning of 'employer' see PARA 510 note 6 ante.

11 Copyright, Designs and Patents Act 1988 s 215(3) (as substituted: see note 5 supra). See *Ultraframe (UK) Ltd v Fielding* [2003] EWCA Civ 1805, [2004] RPC 479, [2003] All ER (D) 232 (Dec); and PARA 518 note 9 ante.

12 Ie by virtue of the Copyright, Designs and Patents Act 1988 s 220 (as amended): see PARA 597 ante. For the meaning of 'marketing' see PARA 597 note 5 ante.

13 Ie subject to the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 7: see PARA 597 note 5 ante.

14 Copyright, Designs and Patents Act 1988 s 215(4) (as substituted: see note 5 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(iv) Duration of Design Right/599. Duration of design right.

(iv) Duration of Design Right

599. Duration of design right.

The design right¹ in a semiconductor topography² design expires³:

- 294 (1) ten years from the end of the calendar year in which the topography or articles made to the topography were first made available for sale or hire anywhere in the world by or with the licence of the design right owner⁴; or
- 295 (2) if neither the topography nor articles made to the topography are so made available within a period of 15 years commencing with the earlier of the time when the topography was first recorded in a design document⁵ or the time when an article was first made to the topography, at the end of that period⁶.

1 For the meaning of 'design right' see PARA 501 ante.

2 For the meaning of 'semiconductor topography' see PARA 591 ante.

3 Subject to the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 7: see PARA 597 note 5 ante.

4 Copyright, Designs and Patents Act 1988 s 216(a) (s 216 substituted by the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 6(1), (3)). As to who is the first owner of design right see PARA 598 ante.

5 For the meaning of 'design document' see PARA 501 note 8 ante.

6 Copyright, Designs and Patents Act 1988 s 216(b) (as substituted: see note 4 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(v) Infringement/600. Primary infringement.

(v) Infringement

600. Primary infringement.

Except in the case of the reproduction of a semiconductor topography¹ design privately for non-commercial aims or the reproduction of a design for the purpose of analysing or evaluating the design or analysing, evaluating or teaching the concepts, processes, systems or techniques embodied in it², the owner of design right³ in a semiconductor topography design has the exclusive right to reproduce the design by making articles to that design or by making a design document⁴ recording the design for the purpose of enabling such articles to be made⁵.

'Reproduction' of a design has the same meaning⁶ as in the case of other designs⁷; and the design right in a semiconductor topography is infringed in the same manner⁸ as the design right in other designs⁹.

Anything which would be an infringement of the design right in a semiconductor topography, if done in relation to the topography as a whole, is an infringement of the design right in the topography if done in relation to a substantial part of the topography¹⁰.

1 For the meaning of 'semiconductor topography' see PARA 591 ante.

2 Copyright, Designs and Patents Act 1988 s 226(1A) (s 226(1) substituted, and s 226(1A) added, by the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 8(1)).

3 For the meaning of 'design right' see PARA 501 ante. As to who is the first owner of design right see PARA 598 ante.

4 For the meaning of 'design document' see PARA 501 note 8 ante.

5 Copyright, Designs and Patents Act 1988 s 226(1) (as substituted: see note 2 supra). Section 228(6) (see PARA 529 ante) does not apply in the case of semiconductor topographies: Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 8(3).

6 I.e. the provisions of the Copyright, Designs and Patents Act 1988 s 226(2), (4) apply: see PARAS 526-527 ante.

7 Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 8(1).

8 I.e. the Copyright, Designs and Patents Act 1988 s 226(3) applies: see PARA 527 ante.

9 Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 8(1).

10 Ibid reg 8(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(v) Infringement/601. Secondary infringement.

601. Secondary infringement.

Secondary infringement of the design right¹ in a semiconductor topography² design arises where a person, without the licence of the design right owner³:

- 296 (1) imports⁴ into the United Kingdom⁵ for commercial purposes⁶; or
- 297 (2) has in his possession for commercial purposes⁷; or
- 298 (3) sells⁸, lets for hire, or offers or exposes for sale⁹ or hire, in the course of a business¹⁰,

an article which is, and which he knows or has reason to believe¹¹ is, an infringing article¹².

These provisions do not, however, apply if the article in question has previously been sold or hired within: (a) the United Kingdom by or with the licence of the owner of design right in the semiconductor topography in question; or (b) the territory of any other member state of the European Union or the territory of Gibraltar by or with the consent of the person for the time being entitled to import it into or sell or hire it within that territory¹³.

1 For the meaning of 'design right' see PARA 501 ante.

2 For the meaning of 'semiconductor topography' see PARA 591 ante.

3 As to who is the design right owner see PARA 598 ante.

4 As to the meaning of 'import' see PARA 329 note 4 ante.

5 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

6 Copyright, Designs and Patents Act 1988 s 227(1)(a). For the meaning of 'commercial purposes' see PARA 526 note 4 ante.

7 Ibid s 227(1)(b).

8 As to the meaning of 'sell' see PARA 330 note 6 ante.

9 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante.

10 Copyright, Designs and Patents Act 1988 s 227(1)(c). For the meaning of 'business' see PARA 511 note 4 ante.

11 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

12 Copyright, Designs and Patents Act 1988 s 227(1). These provisions have effect subject to the provisions of Pt III Ch III (ss 236-245) (as amended) (see PARA 545 et seq post): s 227(2). For the meaning of 'infringing article' see PARA 529 ante. See also PARA 528 ante.

13 Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 8(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(v) Infringement/602. Exceptions to infringement.

602. Exceptions to infringement.

In addition to the exceptions to infringement which apply to other designs¹, it is not an infringement of design right² in a semiconductor topography³ to create another original semiconductor topography as a result of analysis or evaluation of the first topography or of the concepts, processes, systems or techniques embodied in it⁴, or to reproduce that other topography⁵.

- 1 As to the exceptions to infringement see PARA 545 et seq ante.
- 2 For the meaning of 'design right' see PARA 501 ante.
- 3 For the meaning of 'semiconductor topography' see PARA 591 ante.
- 4 Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 8(4)(a).
- 5 Ibid reg 8(4)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/6. DESIGN RIGHT/(2) SEMICONDUCTOR TOPOGRAPHIES/(vi) Licences of Right/603. Licences of right.

(vi) Licences of Right

603. Licences of right.

Unlike other designs, licences of right are not available in respect of semiconductor topography¹ designs during the last five years of design right protection². Otherwise, licences of right are available in circumstances where they are available in respect of other designs³.

1 For the meaning of 'semiconductor topography' see PARA 591 ante.

2 The Copyright, Designs and Patents Act 1988 s 237 (see PARA 548 ante) does not apply: see the Design Right (Semiconductor Topographies) Regulations 1989, SI 1989/1100, reg 9. For the meaning of 'design right' see PARA 501 ante.

3 See *ibid* reg 3. As to the circumstances in which licences of right are available see PARAS 549, 551 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/(1) IN GENERAL/604. Rights conferred on performers and persons having recording rights.

7. RIGHTS IN PERFORMANCES

(1) IN GENERAL

604. Rights conferred on performers and persons having recording rights.

The Copyright, Designs and Patents Act 1988¹ confers economic rights:

- 299 (1) on a performer, by requiring his consent to the exploitation of his performances²; and
- 300 (2) on a person having recording rights³ in relation to a performance, in relation to recordings⁴ made without his consent or that of the performer⁵,

and creates offences in relation to dealing with or using illicit recordings and certain other related acts⁶.

The Copyright, Designs and Patents Act 1988⁷ also confers moral rights on a performer, being the right to be identified⁸ and the right⁹ to object to derogatory treatment of performance¹⁰.

These rights apply in relation to performances taking place before 1 August 1989¹¹; but no act done before that date, or in pursuance of arrangements made before that date, is to be regarded as infringing those rights¹². The rights are independent of:

- 301 (a) any copyright¹³ in, or moral rights¹⁴ relating to, any work performed or any film¹⁵ or sound recording¹⁶ of, or broadcast¹⁷ including, the performance¹⁸; and
- 302 (b) any other right or obligation otherwise¹⁹ arising²⁰.

1 I.e. the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 605 et seq post.

2 Ibid s 180(1)(a). As to such rights see ss 181-184 (as amended); and PARA 609 et seq post. For the meaning of 'performance' see PARA 607 post.

3 For the meaning of 'person having recording rights' see PARA 620 post.

4 For the meaning of 'recording' see PARA 608 post.

5 Copyright, Designs and Patents Act 1988 s 180(1)(b). As to such rights see ss 185-188; and PARA 620 et seq post.

6 Ibid s 180(1) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 5(1)). As to such offences see the Copyright, Designs and Patents Act 1988 ss 198, 201 (both as amended); and PARAS 715, 717 post.

7 I.e. ibid Pt II Ch 3 (ss 205C-205M) (as added): see PARA 722 et seq post.

8 See ibid s 205C (as added); and PARA 722 post.

9 See ibid s 205F (as added); and PARA 725 post.

10 Ibid s 180(1A) (added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 5(2)).

11 le the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

12 Ibid s 180(3).

13 For the meaning of 'copyright' see PARA 57 ante.

14 As to moral rights see PARA 455 et seq ante.

15 For the meaning of 'film' see PARA 86 ante.

16 For the meaning of 'sound recording' see PARA 84 ante.

17 For the meaning of 'broadcast' see PARA 89 ante.

18 Copyright, Designs and Patents Act 1988 s 180(4)(a) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). The provisions of the Copyright, Designs and Patents Act 1988 s 5B(2), (3) (as added) (supplementary provisions relating to films: see PARA 87 ante), s 6(3)-(5A) (as added) (see PARA 89 ante) and s 19(4) (supplementary provisions relating to broadcasting: see PARA 324 ante) apply for the purposes of Pt II (ss 182-212) (as amended), and in relation to an infringement of the rights conferred by that Part, as they apply for the purposes of Pt I (ss 1-179) (as amended) and in relation to an infringement of copyright: s 211(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2; and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 6(1), (3)).

19 le arising otherwise than under the Copyright, Designs and Patents Act 1988 Pt II (as amended).

20 Ibid s 180(4)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/(1) IN GENERAL/605. Territorial extent of rights in performances.

605. Territorial extent of rights in performances.

The provisions relating to rights in performances¹ extend to England and Wales, Scotland and Northern Ireland². For the purposes of those provisions, the territorial waters of the United Kingdom³ are to be treated as part of the United Kingdom⁴.

The provisions apply to:

- 303 (1) things done in the United Kingdom sector of the continental shelf⁵ on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as they apply to things done in the United Kingdom⁶;
- 304 (2) to things done on a British ship⁷, aircraft⁸ or hovercraft⁹ as they apply to things done in the United Kingdom¹⁰.

1 The Copyright, Designs and Patents Act 1988 Pt II (ss 180-212) (as amended).

2 Ibid s 207. For the meanings of 'England' and 'Wales' see PARA 3 note 1 ante.

3 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

4 Copyright, Designs and Patents Act 1988 s 209(1). As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 124 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 31.

5 'The United Kingdom sector of the continental shelf' means the area designated by order under the Continental Shelf Act 1964 s 1(7) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1636); Copyright, Designs and Patents Act 1988 s 209(3).

6 Ibid s 209(2).

7 'British ship' means a ship which is a British ship for the purposes of the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 230) otherwise than by virtue of registration in a country outside the United Kingdom: Copyright, Designs and Patents Act 1988 s 210(2) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 84(b)). For the meaning of 'country' see PARA 59 note 4 ante.

8 'British aircraft' means an aircraft registered in the United Kingdom: Copyright, Designs and Patents Act 1988 s 210(2). As to the registration of aircraft see AIR LAW vol 2 (2008) PARA 368.

9 'British hovercraft' means a hovercraft registered in the United Kingdom: ibid s 210(2). As to hovercraft see AIR LAW vol 2 (2008) PARA 361; SHIPPING AND MARITIME LAW vol 93 (2008) PARA 381 et seq.

10 Ibid s 210(1).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/(1) IN GENERAL/606. Countries enjoying reciprocal protection.

606. Countries enjoying reciprocal protection.

Her Majesty may by Order in Council¹ designate as enjoying reciprocal protection under the provisions relating to rights in performances²:

- 305 (1) a Convention country³; or
- 306 (2) a country as to which Her Majesty is satisfied that provision has been or will be made under its law giving adequate protection for British performances⁴.

If the law of that country provides adequate protection only for certain descriptions of performance, an order under head (2) above designating that country must contain provision limiting to a corresponding extent the protection afforded by the provisions relating to rights in performances in relation to performances connected with that country⁵.

The power conferred by head (2) above is exercisable in relation to any of the Channel Islands, the Isle of Man or any colony⁶ of the United Kingdom, as in relation to a foreign country⁷.

A statutory instrument containing an Order in Council under these provisions is subject to annulment in pursuance of a resolution of either House of Parliament⁸.

1 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

2 I.e. the Copyright, Designs and Patents Act 1988 Pt II (ss 180-212) (as amended).

3 Ibid s 208(1)(a). A 'Convention country' means a country which is a party to a Convention relating to performers' rights to which the United Kingdom is also a party: s 208(2). For the meaning of 'country' see PARA 59 note 4 ante; and for the meaning of 'United Kingdom' see PARA 3 note 1 ante.

The United Kingdom is a party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 26 October 1961; TS 38 (1964); Cmd 2425) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (Marrakesh, 15 April 1994; OJ L336, 23.12.94, p 214): see PARA 452 ante.

4 Copyright, Designs and Patents Act 1988 s 208(1)(b). A 'British performance' means a performance given by an individual who is a British citizen or resident in the United Kingdom or taking place in the United Kingdom: s 208(3). For the meaning of 'British citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq. As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

The Copyright and Performances (Application to Other Countries) Order 2006, SI 2006/316, has been made under these provisions.

5 Copyright, Designs and Patents Act 1988 s 208(4).

6 For the meaning of 'colony' see PARA 3 note 7 ante.

7 Copyright, Designs and Patents Act 1988 s 208(5).

8 Ibid s 208(6).

UPDATE

606 Countries enjoying reciprocal protection

NOTE 4--SI 2006/316 revoked: see now Copyright and Performances (Application to Other Countries Order 2008, SI 2008/677 (amended by SI 2009/2754).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/(1) IN GENERAL/607. Meaning of 'performance'.

607. Meaning of 'performance'.

'Performance' means:

- 307 (1) a dramatic performance, which includes dance and mime;
- 308 (2) a musical performance;
- 309 (3) a reading or recitation of a literary work¹; or
- 310 (4) a performance of a variety act or any similar presentation,

which is, or so far as it is, a live performance² given by one or more individuals³.

1 For the meaning of 'literary work' see PARA 67 ante.

2 There is no need for a performance as such to be in front of an audience for it to be a live performance: *Bamgboye v Reed* [2002] EWHC 2922 (QB), [2004] EMLR 61, [2002] All ER (D) 435 (Nov).

3 Copyright, Designs and Patents Act 1988 s 180(2). Each individual performer who participates in a group performance has the rights in performances conferred by the Copyright, Designs and Patents Act 1988 and may seek to enforce those rights: *Experience Hendrix LLC v Purple Haze Records Ltd* [2005] EWHC 249 (Ch), [2005] IP & T 977, (2005) Times, 5 May. It was left open in this case whether such an individual must join his co-performers to any enforcement proceedings. See also *Bamgboye v Reed* [2002] EWHC 2922 (QB), [2004] EMLR 61, [2002] All ER (D) 435 (Nov).

UPDATE

607 Meaning of 'performance'

NOTE 3--See also *Experience Hendrix LLC v Purple Haze Records Ltd* [2007] EWCA Civ 501, [2007] IP & T 920.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/(1) IN GENERAL/608. Meaning of 'recording'.

608. Meaning of 'recording'.

'Recording', in relation to a performance¹, means a film² or sound recording³:

- 311 (1) made directly from the live performance;
- 312 (2) made from a broadcast⁴ of the performance; or
- 313 (3) made, directly or indirectly, from another recording of the performance⁵.

1 For the meaning of 'performance' see PARA 607 ante.

2 For the meaning of 'film' see PARA 86 ante.

3 For the meaning of 'sound recording' see PARA 84 ante.

4 For the meaning of 'broadcast' see PARA 89 ante.

5 Copyright, Designs and Patents Act 1988 s 180(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/(1) IN GENERAL/609. Qualification for protection.

609. Qualification for protection.

Only certain performances¹ qualify for protection. A performance is a 'qualifying performance'² if it is given by a qualifying individual or takes place in a qualifying country³.

'Qualifying individual' means a citizen or subject of, or an individual resident⁴ in, a qualifying country⁵; and 'qualifying country' means the United Kingdom, another member state of the European Union, or a country designated⁶ as enjoying reciprocal protection⁷.

¹ For the meaning of 'performance' see PARA 607 ante.

² Ie for the purposes of the Copyright, Designs and Patents Act 1988 Pt II (ss 180-212) (as amended).

³ Ibid s 181. It is not necessary that a country is a qualifying country at both the time of the performance and at the time of the infringement; the qualification requirement need only be fulfilled at the time of the infringement: *Experience Hendrix LLC v Purple Haze Records Ltd* [2005] EWHC 249 (Ch), [2005] IP & T 977, (2005) Times, 5 May (performance in Sweden in 1969 a qualifying performance); *Experience Hendrix LLC v Purple Haze Records Ltd* [2006] EWHC 986 (Ch), [2006] All ER (D) 41 (May). As to the application of rights in performances to performances before 1 August 1989 see the Copyright, Designs and Patents Act 1988 s 180(3); and PARA 604 ante. The fact that the performance was given by a performer who died before the Copyright, Designs and Patents Act 1988 came into effect (ie before 1 August 1989: see PARA 54 ante) does not prevent the performance being a qualifying performance: *Experience Hendrix LLC v Purple Haze Records Ltd* [2006] EWHC 986 (Ch), [2006] All ER (D) 41 (May).

⁴ As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

⁵ Copyright, Designs and Patents Act 1988 s 206(1). The reference in the definition of 'qualifying individual' to a person's being a citizen or subject of a qualifying country is to be construed: (1) in relation to the United Kingdom, as a reference to his being a British citizen; and (2) in relation to a colony of the United Kingdom, as a reference to his being a British overseas territories' citizen by connection with that colony: s 206(2) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). For the meaning of 'United Kingdom' see PARA 3 note 1 ante; and for the meaning of 'colony' see PARA 3 note 7 ante. For the meaning of 'British citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq; and for the meaning of 'British overseas territories citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 44 et seq.

⁶ Ie designated by an Order in Council under the Copyright, Designs and Patents Act 1988 s 208 (as amended) (see PARA 606 ante) and to the extent that the order so provides.

⁷ Ibid s 206(1).

UPDATE

609 Qualification for protection

NOTE 3--See also *Experience Hendrix LLC v Purple Haze Records Ltd* [2007] EWCA Civ 501, [2007] IP & T 920.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(i) Nature of Rights/610. Consent required for recording and broadcasting of live performance.

(2) ECONOMIC RIGHTS

(i) Nature of Rights

610. Consent required for recording and broadcasting of live performance.

A performer's rights are infringed¹ by a person who, without his consent²:

- 314 (1) makes a recording³ of the whole or any substantial part of a qualifying performance⁴ directly from the live performance⁵;
- 315 (2) broadcasts⁶ live the whole or any substantial part of a qualifying performance⁷;
- 316 (3) makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of the live performance⁸.

In a claim for infringement⁹ of a performer's rights brought by virtue of these provisions damages must not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given¹⁰.

1 Is subject to the exceptions in the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 676 et seq post.

2 As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

3 For the meaning of 'recording' see PARA 608 ante.

4 For the meaning of 'qualifying performance' see PARA 609 ante.

5 Copyright, Designs and Patents Act 1988 s 182(1)(a) (s 182 substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 20(1)).

6 For the meaning of 'broadcast' see PARA 89 ante.

7 Copyright, Designs and Patents Act 1988 s 182(1)(b) (as substituted (see note 5 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).

8 Copyright, Designs and Patents Act 1988 s 182(1)(c) (as substituted (see note 5 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2).

9 As to claims for infringement see PARA 703 et seq post.

10 Copyright, Designs and Patents Act 1988 s 182(3) (as substituted: see note 5 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(i) Nature of Rights/611. Consent required for copying of recording.

611. Consent required for copying of recording.

A performer's rights are infringed¹ by a person who, without consent², makes a copy of a recording³ of the whole or any substantial part of a qualifying performance⁴. Making a copy of a recording includes making a copy which is transient or is incidental to some other use of the original recording⁵. It is immaterial whether the copy is made directly or indirectly⁶.

The right of a performer under these provisions to authorise or prohibit the making of such copies is called the 'reproduction right'⁷.

1 le subject to the exceptions in the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 676 et seq post.

2 As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

3 For the meaning of 'recording' see PARA 608 ante.

4 Copyright, Designs and Patents Act 1988 s 182A(1) (s 182A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 20(1); and the Copyright, Designs and Patents Act 1988 s 182A(1) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2). For the meaning of 'qualifying performance' see PARA 609 ante.

5 Copyright, Designs and Patents Act 1988 s 182A(1A) (s 182A as added (see note 4 supra); and s 182A(1A) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 8(3)).

6 Copyright, Designs and Patents Act 1988 s 182A(2) (as added: see note 4 supra).

7 Ibid s 182A(3) (as added (see note 4 supra); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). No act done before 1 December 1996 infringes this right (Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 26(2)); nor does any act done on or after that date in pursuance of an agreement made before 19 November 1992 (reg 27(1), (2)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(i) Nature of Rights/612. Consent required for issue of copies to the public.

612. Consent required for issue of copies to the public.

A performer's rights are infringed¹ by a person who, without his consent², issues to the public copies of a recording³ of the whole or any substantial part of a qualifying performance⁴.

References to the issue to the public of copies of a recording are references to:

- 317 (1) the act of putting into circulation in the EEA⁵ copies not previously put into circulation in the EEA by or with the consent of the performer⁶; or
- 318 (2) the act of putting into circulation outside the EEA copies not previously put into circulation in the EEA or elsewhere⁷.

References to the issue to the public of copies of a recording do not include:

- 319 (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation⁸; or
- 320 (b) any subsequent importation⁹ of such copies into the United Kingdom¹⁰ or another EEA state¹¹,

except so far as head (1) above applies to putting into circulation in the EEA copies previously put into circulation outside the EEA¹².

References to the issue of copies of a recording of a performance include the issue of the original recording of the live performance¹³.

The right of a performer under these provisions to authorise or prohibit the issue of copies to the public is called the 'distribution right'¹⁴.

1 Is subject to the exceptions in the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 676 et seq post.

2 As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

3 For the meaning of 'recording' see PARA 608 ante.

4 Copyright, Designs and Patents Act 1988 s 182B(1) (s 182B added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 20(1)). For the meaning of 'qualifying performance' see PARA 609 ante.

5 For the meaning of 'the EEA' see PARA 322 note 6 ante.

6 Copyright, Designs and Patents Act 1988 s 182B(2)(a) (as added: see note 4 supra).

7 Ibid s 182B(2)(b) (as added: see note 4 supra).

8 Ibid s 182B(3)(a) (as added: see note 4 supra).

9 As to the meaning of 'import' see PARA 329 note 4 ante.

10 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

11 Copyright, Designs and Patents Act 1988 s 182B(3)(b) (as added: see note 4 supra). For the meaning of 'EEA state' see PARA 90 note 5 ante.

12 Ibid s 182B(3) (as added: see note 4 supra).

13 Ibid s 182B(4) (as added: see note 4 supra).

14 Ibid s 182B(5) (as added (see note 4 supra); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). No act done before 1 December 1996 infringes this right (Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 26(2)); nor does any act done on or after that date in pursuance of an agreement made before 19 November 1992 (reg 27(1), (2)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(i) Nature of Rights/613. Consent required for rental or lending of copies to the public.

613. Consent required for rental or lending of copies to the public.

A performer's rights are infringed¹ by a person who, without his consent², rents or lends to the public copies of a recording³ of the whole or any substantial part of a qualifying performance⁴.

Subject to the following provisions:

- 321 (1) 'rental' means making a copy of a recording available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage⁵; and
- 322 (2) 'lending' means making a copy of a recording available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public⁶.

The expressions 'rental' and 'lending' do not include:

- 323 (a) making available for the purpose of public performance, playing or showing in public or communication to the public⁷;
- 324 (b) making available for the purpose of exhibition in public⁸; or
- 325 (c) making available for on-the-spot reference use⁹,

and the expression 'lending' does not include making available between establishments which are accessible to the public¹⁰. References to the rental or lending of copies of a recording of a performance include the rental or lending of the original recording of the live performance¹¹.

Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the above purposes¹².

'Rental right' means the right of a performer under these provisions to authorise or prohibit the rental of copies to the public; and 'lending right' means the right of a performer under these provisions to authorise or prohibit the lending of copies to the public¹³.

1 le subject to the exceptions in the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 676 et seq post.

2 As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

3 For the meaning of 'recording' see PARA 608 ante.

4 Copyright, Designs and Patents Act 1988 s 182C(1) (s 182C added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 20(1)). For the meaning of 'qualifying performance' see PARA 609 ante.

5 Copyright, Designs and Patents Act 1988 s 182C(2)(a) (as added (see note 4 supra); s 182C(2), (6), (7) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8).

6 Copyright, Designs and Patents Act 1988 s 182C(2)(b) (as added (see note 4 supra); and as amended (see note 5 supra)).

7 Ibid s 182C(3)(a) (as added (see note 4 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 6(2)(c)). For the meaning of 'communication to the public' see PARA 326 ante.

8 Copyright, Designs and Patents Act 1988 s 182C(3)(b) (as added: see note 4 supra).

9 Ibid s 182C(3)(c) (as added: see note 4 supra).

10 Ibid s 182C(4) (as added: see note 4 supra).

11 Ibid s 182C(6) (as added (see note 4 supra); and as amended (see note 5 supra)).

12 Ibid s 182C(5) (as added: see note 4 supra).

13 Ibid s 182C(7) (as added (see note 4 supra); and as amended (see note 5 supra)). The rental and lending rights do not apply to a copy of a recording of the performance acquired before 1 December 1996 by a person for the purpose of renting it or lending it to the public: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 34(2). Further, no act done before 1 December 1996 infringes this right (reg 26(2)); nor does any act done on or after that date in pursuance of an agreement made before 19 November 1992 (reg 27(1), (2)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(i) Nature of Rights/614. Consent required for making available to the public.

614. Consent required for making available to the public.

A performer's rights are infringed¹ by a person who, without his consent², makes available to the public a recording³ of the whole or any substantial part of a qualifying performance⁴ by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them⁵.

The right of a performer under these provisions to authorise or prohibit the making available to the public of a recording is called the 'making available right'⁶.

1 le subject to the exceptions in the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 676 et seq post.

2 As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

3 For the meaning of 'recording' see PARA 608 ante.

4 For the meaning of 'qualifying performance' see PARA 609 ante.

5 Copyright, Designs and Patents Act 1988 s 182CA(1) (s 182CA added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 7(1)).

6 Copyright, Designs and Patents Act 1988 s 182CA(2) (as added (see note 5 supra); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(i) Nature of Rights/615. Right to equitable remuneration for exploitation of sound recording.

615. Right to equitable remuneration for exploitation of sound recording.

Where a commercially published¹ sound recording² of the whole or any substantial part of a qualifying performance³ is played in public⁴ or is communicated to the public⁵ otherwise than by its being made available⁶ to the public⁷, the performer is entitled to equitable remuneration from the owner of the copyright⁸ in the sound recording⁹. The reference to publication of a sound recording includes making it available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them¹⁰.

The right to equitable remuneration may not be assigned by the performer except to a collecting society¹¹ for the purpose of enabling it to enforce the right on his behalf¹². The right is, however, transmissible by testamentary disposition or by operation of law as personal or movable property; and it may be assigned or further transmitted by any person into whose hands it passes¹³.

The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable¹⁴. In default of agreement as to the amount payable by way of equitable remuneration, the person by or to whom it is payable may apply to the Copyright Tribunal¹⁵ to determine the amount payable¹⁶.

An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under these provisions¹⁷, or to prevent a person from questioning the amount of equitable remuneration or to restrict the powers of the Tribunal under these provisions¹⁸.

1 For the meaning of 'published' see PARA 63 ante.

2 For the meaning of 'sound recording' see PARA 84 ante.

3 For the meaning of 'qualifying performance' see PARA 609 ante.

4 Copyright, Designs and Patents Act 1988 s 182D(1)(a) (s 182D added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 20(1)).

5 For the meaning of 'communication to the public' see PARA 326 ante.

6 I.e. otherwise than in the way mentioned in the Copyright, Designs and Patents Act 1988 s 182CA(1) (as added): see PARA 614 ante.

7 Ibid s 182D(1)(b) (s 182D as added (see note 4 supra); and s 182D(1)(b) substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 7(2)).

8 As to who is the owner of copyright in a work see PARA 118 et seq ante.

9 Copyright, Designs and Patents Act 1988 s 182D(1) (as added: see note 4 supra).

10 Ibid s 182D(1A) (s 182D as added (see note 4 supra); and s 182D(1A) added by Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 3(1), (2)).

11 'Collecting society' means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one performer: Copyright, Designs and Patents Act 1988 s 182D(8) (s 182D as added (see note 4 supra); and s 182D(8) added by Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 3(1), (3)).

12 Copyright, Designs and Patents Act 1988 s 182D(2) (as added: see note 4 supra). Any assignment made before 31 October 2003 under the provisions of s 182D(2) (as added) ceases, on that date, to apply in so far as it relates to right conferred by s 182CA (as added) (ie the making available to the public right: see PARA 614 ante): Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 34(2).

13 Copyright, Designs and Patents Act 1988 s 182D(2) (as added: see note 4 supra).

14 Ibid s 182D(3) (as added: see note 4 supra).

15 As to the Copyright Tribunal see PARA 207 ante; and as to the Tribunal's jurisdiction in relation to such applications see PARA 652 post.

16 Copyright, Designs and Patents Act 1988 s 182D(4) (as added: see note 4 supra).

17 Ibid s 182D(7)(a) (as added: see note 4 supra).

18 Ibid s 182D(7)(b) (as added: see note 4 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(i) Nature of Rights/616. Infringement of performer's rights by use of recording made without consent.

616. Infringement of performer's rights by use of recording made without consent.

A performer's rights are infringed¹ by a person who, without his consent²:

- 326 (1) shows or plays in public the whole or any substantial part of a qualifying performance³; or
- 327 (2) communicates to the public⁴ the whole or any substantial part of a qualifying performance⁵,

by means of a recording⁶ which was, and which that person knows or has reason to believe⁷ was, made without the performer's consent⁸.

1 The subject to the exceptions in the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 676 et seq post.

2 As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

3 Copyright, Designs and Patents Act 1988 s 183(a). For the meaning of 'qualifying performance' see PARA 609 ante.

4 For the meaning of 'communication to the public' see PARA 326 ante.

5 Copyright, Designs and Patents Act 1988 s 183(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 13(1)(a)).

6 For the meaning of 'recording' see PARA 608 ante.

7 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

8 Copyright, Designs and Patents Act 1988 s 183.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(i) Nature of Rights/617. Infringement of performer's rights by importing, possessing or dealing with illicit recording.

617. Infringement of performer's rights by importing, possessing or dealing with illicit recording.

A performer's rights are infringed¹ by a person who, without his consent²:

- 328 (1) imports³ into the United Kingdom⁴ otherwise than for his private and domestic use⁵; or
- 329 (2) in the course of a business⁶ possesses⁷, sells⁸ or lets for hire, offers or exposes for sale⁹ or hire, or distributes¹⁰,

a recording¹¹ of a qualifying performance¹² which is, and which that person knows or has reason to believe¹³ is, an illicit recording¹⁴.

Where in a claim for infringement of a performer's rights brought by virtue of these provisions a defendant shows that the illicit recording was innocently acquired¹⁵ by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of¹⁶.

1 le subject to the exceptions in the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 676 et seq post.

2 As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

3 As to the meaning of 'import' see PARA 329 note 4 ante.

4 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

5 Copyright, Designs and Patents Act 1988 s 184(1)(a).

6 For the meaning of 'business' see PARA 105 note 6 ante.

7 As to the meaning of 'possess' see PARA 330 note 4 ante.

8 As to the meaning of 'sell' see PARA 330 note 6 ante.

9 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante.

10 Copyright, Designs and Patents Act 1988 s 184(1)(b). As to the meaning of 'distribute' see PARA 330 note 11 ante.

11 For the meaning of 'recording' see PARA 608 ante.

12 For the meaning of 'qualifying performance' see PARA 609 ante.

13 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

14 Copyright, Designs and Patents Act 1988 s 184(1). For the meaning of 'illicit recording' see PARA 618 post.

15 'Innocently acquired' means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording: *ibid* s 184(3).

16 *Ibid* s 184(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(i) Nature of Rights/618. Meaning of 'illicit recording' in relation to performer's rights.

618. Meaning of 'illicit recording' in relation to performer's rights.

For the purposes of a performer's rights, a recording¹ of the whole or any substantial part of a performance² of his is an illicit recording if it is made, otherwise than for private purposes, without his consent³. For these purposes, it is immaterial where the recording was made⁴.

1 For the meaning of 'recording' see PARA 608 ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 Copyright, Designs and Patents Act 1988 s 197(1), (2) (s 197(1) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

4 Copyright, Designs and Patents Act 1988 s 197(6).

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619. Recordings treated as illicit recordings.

Illicit recording¹ includes a recording² falling to be treated as an illicit recording by virtue of any of the provisions relating to recordings made for purposes of instruction or examination³, recordings made by educational establishments for educational purposes⁴, recordings of performances in electronic form retained on transfer of the principal recording⁵, recordings made for purposes of broadcast⁶, recording for the purposes of time-shifting⁷, or photographs of broadcasts⁸.

1 For the meaning of 'illicit recording' see PARA 618 ante.

2 For the meaning of 'recording' see PARA 608 ante.

3 Ie by virtue of the Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 4(3): see PARA 680 post.

4 Ie by virtue of ibid Sch 2 para 6(2): see PARA 682 post.

5 Ie by virtue of ibid Sch 2 para 12(2): see PARA 690 post.

6 Ie by virtue of ibid Sch 2 para 16(3): see PARA 695 post.

7 Ie by virtue of ibid Sch 2 para 17A(2) (as added): see PARA 697 post.

8 Ibid s 197(5) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 2(2), 3, 20(4), Sch 2; and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). The provisions relating to photographs of broadcasts are those of the Copyright, Designs and Patents Act 1988 Sch 2 para 17B(2) (as added): see PARA 698 post.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(ii) Rights of Person having Recording Rights/620. Persons having recording rights.

(ii) Rights of Person having Recording Rights

620. Persons having recording rights.

References to a 'person having recording rights', in relation to a performance¹, are references to a person:

- 330 (1) who is party to and has the benefit of an exclusive recording contract² to which the performance is subject³; or
- 331 (2) to whom the benefit of such a contract has been assigned⁴,

and who is a qualifying person⁵.

If, however, a performance is subject to an exclusive recording contract but the person mentioned in head (1) or head (2) above is not a qualifying person, references to a 'person having recording rights', in relation to the performance are references to any person:

- 332 (a) who is licensed by such a person to make recordings of the performance with a view to their commercial exploitation⁶; or
- 333 (b) to whom the benefit of such a licence has been assigned⁷,

and who is a qualifying person⁸.

1 For the meaning of 'performance' see PARA 607 ante.

2 'Exclusive recording contract' means a contract between a performer and another person under which that person is entitled to the exclusion of all other persons, including the performer, to make recordings of one or more of his performances with a view to their commercial exploitation: Copyright, Designs and Patents Act 1988 s 185(1) (s 185(1)-(3) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). 'With a view to commercial exploitation' means with a view to the recordings being sold or let for hire, or shown or played in public: Copyright, Designs and Patents Act 1988 s 185(4). For the meaning of 'recording' see PARA 608 ante.

3 Ibid s 185(2)(a).

4 Ibid s 185(2)(b). As to assignment see PARA 637 post.

5 Ibid s 185(2) (as amended: see note 2 supra). For the meaning of 'qualifying person' see PARA 621 post.

6 Ibid s 185(3)(a). As to licences see PARA 644 et seq post.

7 Ibid s 185(3)(b).

8 Ibid s 185(3) (as amended: see note 2 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(ii) Rights of Person having Recording Rights/621. Meaning of 'qualifying person'.

621. Meaning of 'qualifying person'.

'Qualifying person' means a qualifying individual¹ or a body corporate or other body having legal personality which is formed under the law of a part of the United Kingdom² or another qualifying country³ and has in any qualifying country a place of business⁴ at which substantial business activity is carried on⁵.

In determining for these purposes whether substantial business activity is carried on at a place of business in any country, no account is to be taken of dealings in goods which are at all material times outside that country⁶.

1 For the meaning of 'qualifying individual' see PARA 609 ante.

2 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

3 For the meaning of 'qualifying country' see PARA 609 ante.

4 For the meaning of 'business' see PARA 105 note 6 ante.

5 Copyright, Designs and Patents Act 1988 s 206(1).

6 Ibid s 206(3).

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622. Recording of performance subject to exclusive contract without consent.

A person infringes¹ the rights of a person having recording rights² in relation to a performance³ who, without his consent⁴ or that of the performer, makes a recording⁵ of the whole or any substantial part of the performance⁶.

In a claim for infringement of those rights brought by virtue of these provisions damages must not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given⁷.

1 The subject to the exceptions in the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 676 et seq post.

2 For the meaning of 'person having recording rights' see PARA 620 ante.

3 For the meaning of 'performance' see PARA 607 ante.

4 As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

5 For the meaning of 'recording' see PARA 608 ante.

6 Copyright, Designs and Patents Act 1988 s 186(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).

7 Copyright, Designs and Patents Act 1988 s 186(2).

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623. Infringement of recording rights by use of recording made without consent.

A person infringes¹ the rights of a person having recording rights² in relation to a performance³ who, without his consent⁴ or, in the case of a qualifying performance⁵, that of the performer:

- 334 (1) shows or plays in public the whole or any substantial part of the performance⁶; or
- 335 (2) communicates to the public⁷ the whole or any substantial part of the performance⁸,

by means of a recording⁹ which was, and which that person knows or has reason to believe¹⁰ was, made without the appropriate consent¹¹.

1 The subject to the exceptions in the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 676 et seq post.

2 For the meaning of 'person having recording rights' see PARA 620 ante.

3 For the meaning of 'performance' see PARA 607 ante.

4 As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

5 For the meaning of 'qualifying performance' see PARA 609 ante.

6 Copyright, Designs and Patents Act 1988 s 187(1)(a).

7 For the meaning of 'communication to the public' see PARA 326 ante.

8 Copyright, Designs and Patents Act 1988 s 187(1)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 13(1)(b)).

9 For the meaning of 'recording' see PARA 608 ante.

10 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

11 Copyright, Designs and Patents Act 1988 s 187(1). The reference to 'the appropriate consent' is a reference to the consent of: (1) the performer (s 187(2)(a)); or (2) the person who at the time the consent was given had recording rights in relation to the performance or, if there was more than one such person, of all of them (s 187(2)(b)).

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624. Infringement of recording rights by importing, possessing or dealing with illicit recording.

A person infringes¹ the rights of a person having recording rights² in relation to a performance³ who, without his consent⁴ or, in the case of a qualifying performance⁵, that of the performer:

- 336 (1) imports⁶ into the United Kingdom⁷ otherwise than for his private and domestic use⁸; or
- 337 (2) in the course of a business⁹ possesses¹⁰, sells¹¹ or lets for hire, offers or exposes for sale¹² or hire, or distributes¹³,

a recording¹⁴ of the performance which is, and which that person knows or has reason to believe¹⁵ is, an illicit recording¹⁶.

Where in a claim for infringement of those rights brought by virtue of these provisions a defendant shows that the illicit recording was innocently acquired¹⁷ by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of¹⁸.

1 le subject to the exceptions in the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 676 et seq post.

2 For the meaning of 'person having recording rights' see PARA 620 ante.

3 For the meaning of 'performance' see PARA 607 ante.

4 As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

5 For the meaning of 'qualifying performance' see PARA 609 ante.

6 As to the meaning of 'import' see PARA 329 note 4 ante.

7 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

8 Copyright, Designs and Patents Act 1988 s 188(1)(a).

9 For the meaning of 'business' see PARA 105 note 6 ante.

10 As to the meaning of 'possess' see PARA 330 note 4 ante.

11 As to the meaning of 'sell' see PARA 330 note 6 ante.

12 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante.

13 Copyright, Designs and Patents Act 1988 s 188(1)(b). As to the meaning of 'distribute' see PARA 330 note 11 ante.

14 For the meaning of 'recording' see PARA 608 ante.

15 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

16 Copyright, Designs and Patents Act 1988 s 188(1). For the meaning of 'illicit recording' see PARA 625 post.

17 'Innocently acquired' means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording: *ibid* s 188(3).

18 *Ibid* s 188(2).

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625. Meaning of 'illicit recording' in relation to recording rights.

For the purposes of the rights of a person having recording rights¹, a recording² of the whole or any substantial part of a performance³ subject to the exclusive recording contract⁴ is an illicit recording if it is made, otherwise than for private purposes, without his consent⁵ or that of the performer⁶. It is immaterial for these purposes where the recording was made⁷.

1 For the meaning of 'person having recording rights' see PARA 620 ante.

2 For the meaning of 'recording' see PARA 608 ante.

3 For the meaning of 'performance' see PARA 607 ante.

4 For the meaning of 'exclusive recording contract' see PARA 620 note 2 ante.

5 As to consent generally see PARA 627 post; as to false representation of authority to give consent see PARA 717 post; and as to the circumstances in which the Copyright Tribunal may give consent see PARA 628 post.

6 Copyright, Designs and Patents Act 1988 s 197(1), (3) (s 197(1) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8).

7 Copyright, Designs and Patents Act 1988 s 197(6).

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626. Recordings treated as illicit recordings.

For the purposes of the rights of a person having recording rights¹ in a performance², the categories of permitted recordings³ which, if subsequently dealt with or used, are treated as illicit recordings⁴ are the same as those for the purposes of a performer's rights⁵.

1 For the meaning of 'person having recording rights' see PARA 620 ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 For the meaning of 'recording' see PARA 608 ante.

4 For the meaning of 'illicit recording' see PARA 625 ante.

5 See the Copyright, Designs and Patents Act 1988 s 197(5) (as amended); and PARA 619 ante.

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(iii) Consent

627. Consent.

Consent¹ by a person having a performer's non-property rights², or by a person having recording rights³, may be given in relation to a specific performance⁴, a specified description of performances or performances generally, and may relate to past or future performances⁵.

A person having recording rights in a performance is bound by any consent given by a person through whom he derives his rights under the exclusive recording contract⁶ or licence in question, in the same way as if the consent had been given by him⁷.

Where a performer's non-property right passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him⁸.

1 Ie for the purposes of the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended). See PARAS 610-614 ante.

2 For the meaning of 'performer's non-property rights' see PARA 634 post.

3 For the meaning of 'person having recording rights' see PARA 620 ante.

4 For the meaning of 'performance' see PARA 607 ante.

5 Copyright, Designs and Patents Act 1988 s 193(1) (amended by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(3)(a); and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8).

6 For the meaning of 'exclusive recording contract' see PARA 620 note 2 ante.

7 Copyright, Designs and Patents Act 1988 s 193(2). As to the transmission of the rights of a person having recording rights see PARA 649 post.

8 Ibid s 193(3) (amended by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(3)(b)). As to the transmission of a performer's non property rights see PARA 648 post.

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628. Tribunal's power to give consent on behalf of performer in certain cases.

The Copyright Tribunal¹ may, on the application of a person wishing to make a copy of a recording of a performance², give consent³ in a case where the identity or whereabouts of the person entitled to the reproduction right⁴ cannot be ascertained by reasonable inquiry⁵.

Consent given by the Tribunal has effect as consent of the person entitled to the reproduction right for the purposes of:

- 338 (1) the provisions⁶ relating to performers' rights⁷; and
- 339 (2) the provisions⁸ relating to criminal liability and sufficient consent in relation to qualifying performances⁹,

and may be given subject to any conditions specified in the Tribunal's order¹⁰.

1 As to the Copyright Tribunal see PARA 207 ante.

2 See PARA 627 ante.

3 For the meaning of 'recording' see PARA 608 ante. For the meaning of 'performance' see PARA 607 ante.

4 For the meaning of 'reproduction right' see PARA 611 ante.

5 Copyright, Designs and Patents Act 1988 s 190(1) (substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 23(1), (2)). As to the application see PARA 653 post; and as to the procedure see Copyright Tribunal Practice Direction 1995 (as amended) (dated 7 April 2004) PARA 18.

6 Ie the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

7 Ibid s 190(2)(a) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8).

8 Ie the Copyright, Designs and Patents Act 1988 s 198(3)(a): see PARA 715 post.

9 Ibid s 190(2)(b).

10 Ibid s 190(2) (amended by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 23(1), (3)).

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629. Extended performance rights; existing consents and agreements.

Any consent¹, or any term or condition of an agreement, relating to the exploitation of an existing protected performance² which subsisted immediately before 1 January 1996³ and is not to expire before the end of the period for which rights in performances subsist in relation to that performance⁴ continues to subsist during the period of any extended performance rights⁵, subject to any agreement to the contrary⁶.

1 See PARA 627 ante.

2 For the meaning of 'existing protected performance' see PARA 630 note 8 post.

3 I.e. the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: reg 1(2).

4 I.e. under the Copyright, Designs and Patents Act 1988 Pt II (ss 180-212) (as amended): see PARAS 630-631 post.

5 For the meaning of 'extended performance rights' see PARA 630 post. As to the period of such rights see PARA 631 post.

6 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 32.

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(iv) Duration of Rights

630. In general.

The Copyright, Designs and Patents Act 1988 made provision for the duration of rights in performances¹. Member states of the European Union were, however, subsequently required² to harmonise their laws relating to the term of protection for copyright and certain related rights³. Pursuant to this requirement and in order also to implement certain obligations arising under the EEA Agreement⁴, the Duration of Copyright and Rights in Performances Regulations 1995⁵ were made; they amend the provisions of the Copyright, Designs and Patents Act 1988 relating to the duration of rights in performances with effect from 1 January 1996⁶.

The new provisions apply to:

- 340 (1) performances taking place on or after 1 January 1996;
- 341 (2) performances given before 1 January 1996 which first qualify for protection⁷ on or after that date;
- 342 (3) existing protected performances⁸, subject to the general saving for any longer period applicable⁹;
- 343 (4) performances given before 1 January 1996 in which rights in performances¹⁰ expired on or after 1 August 1989¹¹ and before 31 December 1995 or which were protected by earlier enactments¹² relating to the protection of performers and in which rights in performances did not arise by reason only that the performance was given at a date such that the rights would have ceased to subsist before 1 August 1989, but which were on 1 July 1995 protected in another EEA state under legislation relating to copyright or related rights¹³.

In general, the effect of the Duration of Copyright and Rights in Performances Regulations 1995 is to extend the term of protection for rights in performances, whether given before, on or after 1 January 1996. The effect on performances given before that date is in most cases to extend the period of protection and in some cases to revive expired rights. Where the period of protection is extended, the rights for the additional period are known as 'extended performance rights'¹⁴. Where expired rights have been revived, the term 'revived performance rights' refers to those rights in performances¹⁵ which subsist¹⁶: (a) after having expired¹⁷; or (b) in relation to a performance which was protected by earlier enactments relating to the protection of performers and in which rights in performances¹⁸ did not arise by reason only that the performance was given at a date such that the rights would have ceased to subsist before 1 August 1989¹⁹.

1 See the Copyright, Designs and Patents Act 1988 s 191 (as originally enacted), under which the rights conferred by Pt II (ss 180-212) (as amended) continue to subsist in relation to a performance until the end of the period of 50 years from the end of the calendar year in which the performance takes place. For the meaning of 'performance' see PARA 607 ante.

2 le by EC Council Directive 93/98 (OJ L290, 24.11.93, p 9).

3 See ibid arts 10.2, 13.1.

- 4 le the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183).
- 5 le the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297 (as amended).
- 6 le the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: reg 1(2).
- 7 le under the Copyright, Designs and Patents Act 1988 Pt II (as amended).
- 8 'Existing protected performance' means a performance in relation to which rights under *ibid* Pt II (as amended) subsisted immediately before 1 January 1996: Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 27(1)(b).
- 9 le subject to *ibid* reg 28. Any rights under the Copyright, Designs and Patents Act 1988 Pt II (as amended) in an existing protected performance continue to subsist until the date on which they would have expired under s 191 (as originally enacted) (see note 1 *supra*) if that date is later than the date on which the rights would expire under s 191 (as substituted and amended) (see *PARA 631 post*): Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 28. Thus the old period of protection may be longer than the new period where eg the latter is tied to the period of the country of the performer under the Copyright, Designs and Patents Act 1988 s 191(4) (as substituted and amended): see *PARA 631 post*.
- 10 le *ibid* Pt II (as amended).
- 11 le the date on which the Copyright, Designs and Patents Act 1988 came into force: see *PARA 54 ante*.
- 12 le the Performers' Protection Acts 1958-1972 (repealed).
- 13 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 29.
- 14 See *ibid* reg 30.
- 15 le under the Copyright, Designs and Patents Act 1988 Pt II (as amended).
- 16 le by virtue of the extension of protection conferred by *ibid* s 191 (as substituted and amended): see *PARA 631 post*.
- 17 le under *ibid* s 191 (as originally enacted): see note 1 *supra*.
- 18 le those conferred by *ibid* Pt II (as amended).
- 19 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 30. References to 'revived pre-1988 rights' are references to revived performance rights within head (b) in the text: reg 30.

UPDATE

630 In general

NOTE 2--Directive 93/98 repealed and replaced: European Parliament and EC Council Directive 2006/116 (OJ L372, 27.12.2006, p 12).

NOTE 3--See now arts 10.2, 11: Directive 2006/116.

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631. Duration of rights in performances.

The following provisions have effect with respect to the duration of the economic rights¹ in performances².

Those rights conferred in relation to a performance expire:

- 344 (1) at the end of the period of 50 years from the end of the calendar year in which the performance takes place³; or
- 345 (2) if during that period a recording⁴ of the performance is released⁵, 50 years from the end of the calendar year in which it is released⁶,

subject as follows⁷.

Where a performer is not a national of an EEA state⁸, the duration of the economic rights in performances in relation to his performance is that to which the performance is entitled in the country⁹ of which he is a national, provided that does not exceed the period which would otherwise¹⁰ apply¹¹.

1 The rights conferred by the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended).

2 Ibid s 191(1) (s 191 substituted by the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, regs 4, 10; and the Copyright, Designs and Patents Act 1988 s 191(1), (2), (4), (5) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). As to the application of the Copyright, Designs and Patents Act 1988 s 191 (as substituted and amended) see PARA 630 ante. For the meaning of 'performance' see PARA 607 ante.

3 Ibid s 191(2)(a) (as substituted: see note 2 supra).

4 For the meaning of 'recording' see PARA 608 ante.

5 For these purposes a recording is 'released' when it is first published, played or shown in public or communicated to the public; but, in determining whether a recording has been released, no account may be taken of any unauthorised act: Copyright, Designs and Patents Act 1988 s 191(3) (as substituted (see note 2 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 8(1)(d)). For the meaning of 'published' see PARA 63 ante; and for the meaning of 'communication to the public' see PARA 326 ante.

6 Copyright, Designs and Patents Act 1988 s 191(2)(b) (as substituted: see note 2 supra).

7 Ibid s 191(2) (as substituted and amended: see note 2 supra).

8 For the meaning of 'EEA state' see PARA 90 note 5 ante. Where the performer is not a national of an EEA state, the performer of a performance given before 1 July 1995 is to be treated as an EEA national if he was on that date regarded under the law of the United Kingdom or another EEA state as a national of that state: Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 36(2). For these purposes, the reference to the law of another EEA state is a reference to the law of that state having effect for the purposes of rights corresponding to those provided for in the Copyright, Designs and Patents Act 1988 Pt II (ss 180-212) (as amended): Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 36(2). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

9 For the meaning of 'country' see PARA 59 note 4 ante.

10 le under the Copyright, Designs and Patents Act 1988 s 191(2), (3) (as substituted and amended): see the text to notes 3-7 supra.

11 Ibid s 191(4) (as substituted and amended: see note 2 supra). If, or to the extent that, the application of s 191(4) (as substituted and amended) would be at variance with an international obligation to which the United Kingdom became subject prior to 29 October 1993, the duration of the economic rights in performances is as specified in s 191(2), (3) (as substituted and amended) (see the text to notes 3-7 supra): s 191(5) (as so substituted and amended).

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632. Revived performance rights; acts of exploitation when performance in public domain.

No act done before 1 January 1996¹ is to be regarded as infringing revived performance rights² in a performance³.

It is not an infringement of revived performance rights in a performance:

- 346 (1) to do anything on or after 1 January 1996 in pursuance of arrangements⁴ made before 1 January 1995 at a time when the performance was not protected⁵ or to issue to the public on or after 1 January 1996 a recording⁶ of a performance made before 1 July 1995 at a time when the performance was not protected⁷;
- 347 (2) to do anything on or after 1 January 1996 in relation to a sound recording⁸ or film⁹ made before that date, or made in pursuance of arrangements made before that date, which contains a recording of the performance if the recording of the performance was made before 1 July 1995 at a time when the performance was not protected or the recording of the performance was made in pursuance of arrangements made before 1 July 1995 at a time when the performance was not protected¹⁰;
- 348 (3) to do on or after 1 January 1996 anything at a time when, or in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act¹¹ cannot by reasonable inquiry be ascertained¹².

1 le the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: reg 1(2).

2 For the meaning of 'revived performance rights' see PARA 630 ante.

3 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 33(1). For the meaning of 'performance' see PARA 607 ante.

4 'Arrangements' means arrangements for the exploitation of the performance in question: ibid reg 33(5).

5 For these purposes, references to a performance being protected are: (1) in relation to the period on and after 1 August 1989, references to rights under the Copyright, Designs and Patents Act 1988 Pt II (ss 180-212) (as amended) subsisting in relation to the performance; and (2) in relation to earlier periods, references to the consent of the performer being required under earlier enactments relating to the protection of performers: Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 33(6). As to the rights under the Copyright, Designs and Patents Act 1988 Pt II (as amended) see PARA 610 et seq ante; and as to earlier enactments see PARA 630 note 12 ante.

6 For the meaning of 'recording' see PARA 608 ante.

7 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 33(2).

8 For the meaning of 'sound recording' see PARA 84 ante.

9 For the meaning of 'film' see PARA 86 ante.

10 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 33(3).

11 As to who is entitled to authorise the act see PARAS 633-636 post.

12 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 33(4).

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(v) Entitlement to Rights Granted

633. Performer's property rights.

The following rights conferred¹ on a performer, that is to say reproduction right², distribution right³, rental right⁴, lending right⁵, and making available right⁶, are property rights called 'performer's property rights'⁷.

Where different persons are, whether in consequence of a partial assignment⁸ or otherwise, entitled to different aspects of a performer's property rights in relation to a performance⁹, the rights owner for any purpose¹⁰ is the person who is entitled to the aspect of those rights relevant for that purpose¹¹.

Where a performer's property rights, or any aspect of them, is owned by more than one person jointly, references¹² to the rights owner are references to all the owners so that, in particular, any requirement for the licence of the rights owner requires the licence of all of them¹³.

1 Ie by the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended).

2 For the meaning of 'reproduction right' see PARA 611 ante.

3 For the meaning of 'distribution right' see PARA 612 ante.

4 For the meaning of 'rental right' see PARA 613 ante.

5 For the meaning of 'lending right' see PARA 613 ante.

6 For the meaning of 'making available right' see PARA 614 ante.

7 Copyright, Designs and Patents Act 1988 s 191A(1) (s 191A added by the Copyright and Related Rights Regulations 1996, SI 1996/2927, regs 4, 21(1); and the Copyright, Designs and Patents Act 1988 s 191A(1) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 7(3); and by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 4, 8). References in the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (as amended) to the consent of the performer are to be construed in relation to a performer's property rights as references to the consent of the rights owner: s 191A(2) (as so added; and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 8).

8 As to assignment of a performer's property rights see PARA 637 post.

9 For the meaning of 'performance' see PARA 607 ante.

10 Ie any purpose of the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (as amended).

11 Ibid s 191A(3) (as added (see note 7 supra); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 8).

12 Ie in the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (as amended).

13 Ibid s 191A(4) (as added (see note 7 supra); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 8).

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634. Performer's non-property rights.

The rights conferred on a performer:

- 349 (1) relating to the consent required for the recording etc of live performances¹;
- 350 (2) relating to infringement of a performer's rights by the use of a recording made without consent²; and
- 351 (3) relating to infringement of a performer's rights by importing, possessing or dealing with an illicit recording³,

are called 'performer's non-property rights'⁴. Such rights are not assignable or transmissible, except to a limited extent⁵.

1 Ie the rights conferred by the Copyright, Designs and Patents Act 1988 s 182 (as substituted and amended): see PARA 610 ante.

2 Ie the rights conferred by *ibid* s 183 (as amended): see PARA 616 ante.

3 Ie the rights conferred by *ibid* s 184: see PARA 617 ante.

4 *Ibid* s 192A(1) (s 192A added by the Copyright and Related Rights Regulations 1996, SI 1996/2927, regs 4, 21(2); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 5, 8). References to the performer, in the context of the person having any such right, must be construed as references to the person for the time being entitled to exercise those rights: Copyright, Designs and Patents Act 1988 s 192A(3) (as so added and amended).

5 *Ibid* s 192A(1) (as added and amended: see note 4 *supra*). As to the extent to which performer's non-property rights are assignable or transmissible see PARA 648 post.

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635. Rights of a person having recording rights.

The rights conferred¹ on a person having recording rights² are not assignable or transmissible³; and accordingly those rights are not property rights⁴.

1 I.e. the rights conferred by the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended).

2 For the meaning of 'person having recording rights' see PARA 620 ante.

3 Copyright, Designs and Patents Act 1988 s 192B(1) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2927, regs 4, 21(2); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). See, however, para 649 post.

4 As to claims for infringement of such rights see PARA 709 post.

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636. Extended and revived performance rights.

Any extended performance rights¹ are exercisable as from 1 January 1996² by the person who was entitled to exercise those rights immediately before that date, that is:

- 352 (1) in the case of performers' rights, the performer or, if he has died, the person entitled³ to exercise those rights⁴; and
- 353 (2) in the case of recording rights, the person who was the person⁵ having those rights⁶.

Any revived performance rights⁷ are exercisable as from 1 January 1996:

- 354 (a) in the case of rights which expired on or after 1 August 1989⁸, by the person who was entitled to exercise those rights immediately before they expired⁹;
- 355 (b) in the case of revived pre-1988 performers' rights¹⁰, by the performer or his personal representatives¹¹;
- 356 (c) in the case of revived pre-1988 recording rights, by the person who would have been the person having those rights immediately before 1 August 1989 or, if earlier, immediately before the death of the performer, applying the provisions of the Copyright, Designs and Patents Act 1988¹² to the circumstances then obtaining¹³.

Any remuneration or damages received by a person's personal representatives by virtue of a right conferred on them by these provisions¹⁴ devolves as part of that person's estate as if the right had subsisted and been vested in him immediately before his death¹⁵.

1 For the meaning of 'extended performance rights' see PARA 630 ante.

2 I.e. the date on which the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, came into force: reg 1(2).

3 I.e. by virtue of *ibid* s 192(2) (as originally enacted): see PARA 642 note 3 post.

4 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 31(1)(a).

5 I.e. within the meaning of the Copyright, Designs and Patents Act 1988 s 185: see PARA 620 ante.

6 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 31(1)(b). For the meaning of 'person having recording rights' see PARA 620 ante.

7 For the meaning of 'revived performance rights' see PARA 630 ante.

8 I.e. the date on which the Copyright, Designs and Patents Act 1988 came into force: see PARA 54 ante.

9 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 31(2)(a).

10 For the meaning of 'revived pre-1988 rights' see PARA 630 note 19 ante.

11 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 31(2)(b).

12 I.e. the Copyright, Designs and Patents Act 1988 s 185: see PARA 620 ante.

- 13 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 31(2)(c).
- 14 *Ibid* reg 31(1) or (2): see the text to notes 1-13 *supra*.
- 15 *Ibid* reg 31(3).

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(vi) Transmission of Rights

A. ASSIGNMENT OF PERFORMER'S PROPERTY RIGHTS

(A) ASSIGNMENT

637. Assignment.

Performer's property rights¹ are transmissible by assignment, by testamentary disposition or by operation of law, as personal or movable property². An assignment or other transmission of performer's property rights may be partial, that is, limited so as to apply:

- 357 (1) to one or more, but not all, of the things requiring the consent³ of the rights owner⁴;
- 358 (2) to part, but not the whole, of the period for which the rights are to subsist⁵.

An assignment of performer's property rights is not effective unless it is in writing⁶ signed by or on behalf of the assignor⁷.

1 For the meaning of 'performer's property rights' see PARA 633 ante.

2 Copyright, Designs and Patents Act 1988 s 191B(1) (s 191B added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1)).

3 As to references to consent see PARA 633 ante.

4 Copyright, Designs and Patents Act 1988 s 191B(2)(a) (as added: see note 2 supra). As to references to the rights owner see PARA 633 ante.

5 Ibid s 191B(2)(b) (as added: see note 2 supra). As to duration of rights in performances see PARA 631 ante.

6 For the meaning of 'writing' see PARA 522 note 7 ante.

7 Copyright, Designs and Patents Act 1988 s 191B(3) (as added: see note 2 supra). The requirement that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal: s 210A(1) (added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 7). As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

UPDATE

637 Assignment

NOTE 7--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1): see COMPANIES vol 14 (2009) PARA 283.

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638. Prospective ownership of a performer's property rights.

The following provisions apply where by an agreement made in relation to a future recording¹ of a performance², and signed³ by or on behalf of the performer, the performer purports to assign his performer's property rights⁴, wholly or partially, to another person⁵.

If, on the rights coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, they vest in the assignee or his successor in title without further assurance⁶.

A licence granted by a prospective owner⁷ of performer's property rights is binding on every successor in title to his interest, or prospective interest, in the rights, except a purchaser in good faith for valuable consideration and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser⁸.

1 For the meaning of 'recording' see PARA 608 ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 There is, however, an exception to the requirement for signature in relation to the presumed transfer of rental right in the case of a film production agreement: see the Copyright, Designs and Patents Act 1988 s 191F(2) (as added); and PARA 639 post. The requirement that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal: s 210A(1) (added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 7). As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

4 For the meaning of 'performer's property rights' see PARA 633 ante.

5 Copyright, Designs and Patents Act 1988 s 191C(1) (s 191C added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1)).

6 Copyright, Designs and Patents Act 1988 s 191C(2) (as added: see note 5 supra).

7 'Prospective owner', in relation to a performer's property rights, means a person who is prospectively entitled to those rights by virtue of such an agreement as is mentioned in *ibid* s 191C(1) (as added) (see the text to notes 1-5 supra): s 191C(4) (as added: see note 5 supra).

8 *Ibid* s 191C(3) (as added: see note 5 supra). References to doing anything with, or without, the licence of the rights owner are to be construed accordingly: s 191C(3) (as so added; and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8).

UPDATE

638 Prospective ownership of a performer's property rights

NOTE 3--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1): see COMPANIES vol 14 (2009) PARA 283.

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(B) TRANSFER OF RENTAL RIGHT

639. Presumption of transfer of rental right in case of film production agreement.

Where an agreement concerning film¹ production is concluded between a performer and a film producer², the performer is presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right³ in relation to the film arising from the inclusion of a recording⁴ of his performance⁵ in the film⁶. Where there is such a presumed transfer of the performer's rental right, the performer nevertheless has a right⁷ to equitable remuneration⁸.

Where these provisions apply, the absence of signature by or on behalf of the performer does not exclude the operation of the provisions⁹ relating to the effect of a purported assignment of future rights¹⁰.

1 For the meaning of 'film' see PARA 86 ante.

2 The reference to an agreement concluded between a performer and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries: Copyright, Designs and Patents Act 1988 s 191F(3) (s 191F added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1)).

3 For the meaning of 'rental right' see PARA 613 ante.

4 For the meaning of 'recording' see PARA 608 ante.

5 For the meaning of 'performance' see PARA 607 ante.

6 Copyright, Designs and Patents Act 1988 s 191F(1) (as added: see note 2 supra). Section 191F (as added) applies in relation to an agreement concluded before 1 December 1996: Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 32(1).

7 Ie under the Copyright, Designs and Patents Act 1988 s 191G (as added): see PARA 640 post.

8 Ibid s 191F(4) (as added: see note 2 supra).

9 Ie ibid s 191C (as added and amended): see PARA 638 ante.

10 Ibid s 191F(2) (as added: see note 2 supra).

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640. Right to equitable remuneration where rental right transferred.

Where a performer has transferred his rental right¹ concerning a sound recording² or a film³ to the producer of the sound recording or film, he retains the right to equitable remuneration for the rental⁴.

The right to equitable remuneration may not be assigned by the performer except to a collecting society⁵ for the purpose of enabling it to enforce the right on his behalf⁶. The right is, however, transmissible by testamentary disposition or by operation of law⁷ as personal or movable property; and it may be assigned or further transmitted by any person into whose hands it passes⁸.

Equitable remuneration is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his⁹. The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to the right¹⁰ to refer the matter in default of agreement to the Copyright Tribunal¹¹.

An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration¹².

1 The reference to the transfer of rental right by one person to another includes any arrangement having that effect, whether made by them directly or through intermediaries: Copyright, Designs and Patents Act 1988 s 191G(1) (s 191G added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1)). For the meaning of 'rental right' see PARA 613 ante.

2 For the meaning of 'sound recording' see PARA 84 ante.

3 For the meaning of 'film' see PARA 86 ante.

4 Copyright, Designs and Patents Act 1988 s 191G(1) (as added: see note 1 supra). For the meaning of 'rental' see PARA 613 ante. No act done before 1 December 1996 gives rise to any such right to remuneration: Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 1(2), 26(2). The right arises in respect of agreements made before 1 December 1996 (see regs 1(2), 32(2)); but no right to equitable remuneration under the Copyright, Designs and Patents Act 1988 s 191G (as added) arises: (1) in respect of any rental of a sound recording or film before 1 April 1997; or (2) in respect of rental after that date of a sound recording or film made in pursuance of an agreement entered into before 1 July 1994, unless the author or performer, or a successor in title of his, has before 1 January 1997 notified the person by whom the remuneration would be payable that he intends to exercise that right (Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 33). Nor does the right apply to a copy of the work acquired by a person before 1 December 1996 for the purpose of renting or lending it to the public: reg 34(1).

5 'Collecting society' means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one performer: Copyright, Designs and Patents Act 1988 s 191G(6) (as added: see note 1 supra).

6 Ibid s 191G(2) (as added: see note 1 supra).

7 As to transmission by testamentary disposition or operation of law see PARA 641 post.

8 Copyright, Designs and Patents Act 1988 s 191G(2) (as added: see note 1 supra).

9 Ibid s 191G(3) (as added: see note 1 supra).

10 Ie under ibid s 191H (as added): see PARA 657 post.

11 Ibid s 191G(4) (as added: see note 1 supra). As to the Copyright Tribunal see PARA 207 ante. As to such applications see PARA 657 post.

12 Ibid s 191G(5) (as added: see note 1 supra).

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(C) TRANSMISSION BY OPERATION OF LAW

641. Transmission by operation of law.

Performer's property rights¹ are transmissible by testamentary disposition or by operation of law, as personal or movable property².

Where under a bequest, whether general or specific, a person is entitled beneficially or otherwise to any material thing containing an original recording³ of a performance⁴ which was not published⁵ before the death of the testator, the bequest is to be construed, unless a contrary intention is indicated in the testator's will or a codicil to it, as including any performer's rights in relation to the recording to which the testator was entitled immediately before his death⁶.

1 For the meaning of 'performer's property rights' see PARA 633 ante.

2 Copyright, Designs and Patents Act 1988 s 191B(1) (ss 191B, 191E both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1)).

3 For the meaning of 'recording' see PARA 608 ante.

4 For the meaning of 'performance' see PARA 607 ante.

5 For the meaning of 'published' see PARA 63 ante.

6 Copyright, Designs and Patents Act 1988 s 191E (as added: see note 2 supra). As to performer's rights see PARA 604 ante.

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642. New rights; exercise of rights in relation to performances.

Any new right¹ in relation to a qualifying performance is exercisable as from 1 December 1996² by the performer or, if he has died, by the person who immediately before that date was entitled³ to exercise the rights conferred on the performer in relation to that performance⁴.

Any remuneration or damages received by a person's personal representatives by virtue of a right so conferred on them devolve as part of that person's estate as if the right had subsisted and been vested in him immediately before his death⁵.

1 'New right' means a right arising by virtue of the Copyright and Related Rights Regulations 1996, SI 1996/2967 (as amended) in relation to a qualifying performance, to authorise or prohibit an act: reg 25(3). The expression does not include a right corresponding to a right which existed immediately before 1 December 1996 or a right to remuneration arising by virtue of the Copyright and Related Rights Regulations 1996, SI 1996/2967 (as amended): reg 25(3)(a), (b). The new rights are essentially performer's property rights: see PARA 633 ante. For the meaning of 'qualifying performance' see PARA 609 ante.

2 Ie the date on which the Copyright and Related Rights Regulations 1996, SI 1996/2967, came into force: reg 1(2).

3 Ie by virtue of the Copyright, Designs and Patents Act 1988 s 192(2) (as originally enacted), under which, on the death of a person entitled to performer's rights, the rights passed to such person as he might by testamentary disposition specifically direct and, if or to the extent that there was no such direction, the rights were exercisable by his personal representatives.

4 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 30(1).

5 Ibid reg 30(2).

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643. New rights; effect of authorisation of copying before 1 December 1996.

Where before 1 December 1996¹ the owner or prospective owner² of performers' rights in a performance³ has authorised a person to make a copy of a recording⁴ of the performance, any new right⁵ in relation to that copy vested on 1 December 1996 in the person so authorised, subject to any agreement to the contrary⁶.

1 The date on which the Copyright and Related Rights Regulations 1996, SI 1996/2967, came into force: reg 1(2).

2 As to prospective ownership see PARA 638 ante.

3 For the meaning of 'performance' see PARA 607 ante.

4 For the meaning of 'recording' see PARA 608 ante.

5 For the meaning of 'new right' see PARA 642 note 1 ante.

6 Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 31(b).

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(D) LICENCES

644. Licences.

A licence granted by the owner of performer's property rights¹ is binding on every successor in title to his interest in the rights, except a purchaser in good faith for valuable consideration and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser².

¹ For the meaning of 'performer's property rights' see PARA 633 ante.

² Copyright, Designs and Patents Act 1988 s 191B(4) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1)). References to doing anything with, or without, the licence of the rights owner are to be construed accordingly: Copyright, Designs and Patents Act 1988 s 191B(4) (as so added; and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8).

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645. Exclusive licences.

An 'exclusive licence' means a licence in writing¹ signed² by or on behalf of the owner of performer's property rights³ authorising the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the rights owner⁴.

The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence⁵ as he has against the person granting the licence⁶. An exclusive licensee may bring proceedings for infringement in the same way as an assignee⁷.

1 For the meaning of 'writing' see PARA 522 note 7 ante.

2 The requirement that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal: Copyright, Designs and Patents Act 1988 s 210A(1) (added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 7). As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

3 For the meaning of 'performer's property rights' see PARA 633 ante.

4 Copyright, Designs and Patents Act 1988 s 191D(1) (s 191D added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1); and the Copyright, Designs and Patents Act 1988 s 191D(1) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8s).

5 As to the persons who are so bound see PARA 644 ante.

6 Copyright, Designs and Patents Act 1988 s 191D(2) (as added: see note 4 supra).

7 See *ibid* s 191L (as added and amended); and PARA 707 post.

UPDATE

645 Exclusive licences

NOTE 2--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1): see COMPANIES vol 14 (2009) PARA 283.

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646. Certification of licensing schemes.

A person operating or proposing to operate a licensing scheme¹ may apply to the Secretary of State² to certify the scheme for the purposes of the recording of broadcasts by educational establishments³, the lending of certain recordings⁴, or the provision⁵ of sub-titled copies of broadcasts⁶.

The Secretary of State must by order made by statutory instrument certify the scheme if he is satisfied that it enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences⁷ and sets out clearly the charges, if any, payable and the other terms on which licences will be granted⁸. The scheme must be scheduled to the order and the certification comes into operation⁹ on such date, not less than eight weeks after the order is made, as may be specified in the order¹⁰ or, if the scheme is the subject of a reference to the Copyright Tribunal¹¹, any later date on which the order of the Tribunal comes into force or the reference is withdrawn¹². A variation of the scheme is not effective unless a corresponding amendment of the order is made¹³.

The order must be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms¹⁴.

1 For the meaning of 'licensing scheme' see PARA 659 post.

2 As to the Secretary of State see PARA 183 note 2 ante.

3 Ie for the purposes of the Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 6 (as amended): see PARA 682 post.

4 Ie for the purposes of *ibid* Sch 2 para 14A (as added): see PARA 693 post.

5 Ie for the purposes of *ibid* Sch 2 para 20 (as amended): see PARA 701 post.

6 *Ibid* s 205A, Sch 2A para 16(1) (s 205A, Sch 2A both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 22; and the Copyright, Designs and Patents Act 1988 Sch 2A para 16(1) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 17(a)). The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Educational Recording Agency Limited) Order 2005, SI 2005/222, has been made.

7 Copyright, Designs and Patents Act 1988 Sch 2A para 16(2)(a) (as added: see note 6 *supra*).

8 *Ibid* Sch 2A para 16(2)(b) (as added: see note 6 *supra*).

9 Ie for the purposes of *ibid* Sch 2 para 6 (as amended) (see PARA 682 post), Sch 2 para 14A (as added) (see PARA 693 post), or Sch 2 para 20 (as amended) (see PARA 701 post), as the case may be: see notes 3-5 *supra*.

10 *Ibid* Sch 2A para 16(3)(a) (as added (see note 6 *supra*); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 17(b)).

11 Ie under the Copyright, Designs and Patents Act 1988 Sch 2A para 3 (as added): see PARA 660 post. As to the Copyright Tribunal see PARA 207 ante.

12 *Ibid* Sch 2A para 16(3)(b) (as added (see note 6 *supra*); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 17(b)).

13 Copyright, Designs and Patents Act 1988 Sch 2A para 16(4) (as added: see note 6 supra). The Secretary of State must make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under Sch 2A para 3 (as added) (see PARA 660 post), Sch 2A para 4 (as added) (see PARA 661 post) or Sch 2A para 5 (as added) (see PARA 662 post): Sch 2A para 16(4) (as so added).

14 Ibid Sch 2A para 16(5) (as added: see note 6 supra).

UPDATE

646 Certification of licensing schemes

NOTE 6--SI 2005/222 revoked: SI 2008/211. See also Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Educational Recording Agency Limited) Order 2007, SI 2007/266 (amended by SI 2008/211, SI 2009/20).

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647. Powers exercisable in consequence of report of the Competition Commission.

Where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Competition Commission or, as the case may be, the Office of Fair Trading¹ under the powers² to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations etc consists of or includes:

- 359 (1) conditions in licences granted by the owner of a performer's property rights³ restricting the use to which a recording⁴ may be put by the licensee or the right of the owner to grant other licenses⁵; or
- 360 (2) a refusal of an owner of a performer's property rights to grant licences on reasonable terms⁶,

the powers relating to enforcement orders⁷ include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the performer's property rights are to be available as of right⁸.

The Secretary of State, the Competition Commission or, as the case may be, the Office of Fair Trading must only exercise the powers available by virtue of these provisions if he or it is satisfied that to do so does not contravene any Convention relating to performers' rights to which the United Kingdom⁹ is a party¹⁰.

The terms of a licence available by virtue of these provisions must, in default of agreement, be settled by the Copyright Tribunal¹¹ on an application by the person requiring the licence¹².

1 As to the Secretary of State see PARA 183 note 2 ante; as to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6.

2 I.e. the powers under the Competition Act 1980 s 12(5) or the Enterprise Act 2002 s 41(2), s 55(2), s 66(6), s 75(2), s 83(2), s 138(2), s 147(2) or s 160(2), or Sch 7 para 5(2) or Sch 7 para 10(2): see COMPETITION vol 18 (2009) PARAS 10, 188 et seq. Certain references in the Copyright, Designs and Patents Act 1988 s 205A, Sch 2A (as added) to various provisions of the Enterprise Act 2002 are modified to include references to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, SI 2003/1592: see art 16, Sch 4 para 7(3).

3 For the meaning of 'performer's property rights' see PARA 633 ante.

4 For the meaning of 'recording' see PARA 608 ante.

5 Copyright, Designs and Patents Act 1988, s 205A, Sch 2A para 17(1)(a) (s 205A, Sch 2A both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 22; and the Copyright, Designs and Patents Act 1988 Sch 2A para 17(1), (2) substituted, and Sch 2A para 17(1A) added, by the Enterprise Act 2002 s 278(1), Sch 25 para 18(1), (5)(a)). As to licences see PARAS 644-645 ante.

6 Copyright, Designs and Patents Act 1988 Sch 2A para 17(1)(b) (as added and substituted: see note 5 supra).

7 I.e. the powers conferred by the Enterprise Act 2002 Sch 8: see COMPETITION vol 18 (2009) PARA 232 et seq.

8 Copyright, Designs and Patents Act 1988 Sch 2A para 17(1A) (as added: see note 5 supra). The references to anything permitted by the Enterprise Act 2002 Sch 8 in the Competition Act 1980 s 12(5A) (as added) and in the Enterprise Act 2002 s 75(4)(a), s 83(4)(a), s 84(2)(a), s 89(1), s 160(4)(a), s 161(3)(a) and s 164(1), and Sch 7 paras 5, 10 and 11 (see COMPETITION vol 18 (2009) PARAS 10, 188 et seq) must be construed accordingly:

Copyright, Designs and Patents Act 1988 Sch 2A para 17(2) (as added and substituted: see note 5 supra). As to undertakings in infringement proceedings to take such a licence see PARA 706 post.

9 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

10 Copyright, Designs and Patents Act 1988 Sch 2A para 17(3) (as added (see note 5 supra); and amended by the Enterprise Act 2002 Sch 25 para 18(1), (5)(b)(i), (ii)). As to the Conventions to which the United Kingdom is a party see PARA 606 note 3 ante.

11 As to the Copyright Tribunal see PARA 207 ante.

12 Copyright, Designs and Patents Act 1988 Sch 2A para 17(4) (as added: see note 5 supra). As to such applications see PARA 673 post.

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B. TRANSMISSION OF PERFORMER'S NON-PROPERTY RIGHTS

648. Transmission of performer's non-property rights.

Performer's non-property rights¹ are not assignable or transmissible except as follows². On the death of a person entitled to performer's non-property rights:

- 361 (1) the right passes to such person as he may by testamentary disposition specifically direct³; and
- 362 (2) if, or to the extent that, there is no such direction, the right is exercisable by his personal representatives⁴.

Where by virtue of head (1) above a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others⁵. Any damages recovered by personal representatives by virtue of these provisions in respect of an infringement⁶ after a person's death devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death⁷.

1 For the meaning of 'performer's non-property rights' see PARA 634 ante.

2 Copyright, Designs and Patents Act 1988 s 192A(1) (s 192A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(2)).

3 Copyright, Designs and Patents Act 1988 s 192A(2)(a) (as added: see note 2 supra).

4 Ibid s 192A(2)(b) (as added: see note 2 supra). As to personal representatives see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 1 et seq.

5 Ibid s 192A(4) (as added: see note 2 supra).

6 As to claims for infringement see PARA 709 post.

7 Copyright, Designs and Patents Act 1988 s 192A(5) (as added: see note 2 supra).

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Transmission of rights of person having recording rights.

C. TRANSMISSION OF RIGHTS OF PERSON HAVING RECORDING RIGHTS

649. Transmission of rights of person having recording rights.

The rights¹ of a person having recording rights² are not assignable or transmissible³. A person may, however, acquire the recording rights in a performance⁴ if he takes an assignment either of the benefit⁵ of the exclusive recording contract⁶ to which the performance is subject or of the benefit⁷ of a licence from the person who has the exclusive recording contract⁸.

1 Ie the rights conferred by the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended).

2 For the meaning of 'person having recording rights' see PARA 620 ante.

3 Copyright, Designs and Patents Act 1988 s 192B(1) (s 192B added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(2); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8).

4 For the meaning of 'performance' see PARA 607 ante.

5 Ie under the Copyright, Designs and Patents Act 1988 s 185(2)(b): see PARA 620 ante.

6 For the meaning of 'exclusive recording contract' see PARA 620 note 2 ante.

7 Ie under the Copyright, Designs and Patents Act 1988 s 185(3)(b): see PARA 620 ante.

8 Ibid s 192B(2) (as added and amended: see note 3 supra).

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D. REVIVED PERFORMANCE RIGHTS

650. User as of right subject to reasonable remuneration.

In the case of a performance¹ in which revived performance rights² subsist, any acts which require the consent of any person³ (the 'rights owner') are to be treated as having that consent, subject only to the payment of such reasonable remuneration as may be agreed or determined, in default of agreement, by the Copyright Tribunal⁴.

A person intending to avail himself of such right must give reasonable notice of his intention to the rights owner, stating when he intends to begin to do the acts⁵. If he does not give such notice, his acts are not to be treated as having consent⁶. If he does give such notice, his acts are to be treated as having consent and reasonable remuneration is payable in respect of them despite the fact that its amount is not agreed or determined until later⁷.

1 For the meaning of 'performance' see PARA 607 ante.

2 For the meaning of 'revived performance rights' see PARA 630 ante.

3 I.e. under the Copyright, Designs and Patents Act 1988 Pt II (ss 180-212) (as amended).

4 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 34(1). As to the Copyright Tribunal see PARA 207 ante. As to such applications see PARA 675 post.

5 Ibid reg 34(2).

6 Ibid reg 34(3).

7 Ibid reg 34(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(vii) Jurisdiction of the Copyright Tribunal/A. IN GENERAL/651. Jurisdiction of the Tribunal.

(vii) Jurisdiction of the Copyright Tribunal

A. IN GENERAL

651. Jurisdiction of the Tribunal.

The Copyright Tribunal¹ has jurisdiction under the provisions relating to economic rights in performances² to hear and determine proceedings relating to:

- 363 (1) the amount of equitable remuneration³ for the exploitation of a commercial sound recording⁴;
- 364 (2) applications⁵ to give consent on behalf of the owner of reproduction right⁶;
- 365 (3) the amount of equitable remuneration⁷ on the transfer of rental right⁸;
- 366 (4) determination⁹ of royalty or other remuneration to be paid with respect to reception and retransmission of wireless broadcast by cable¹⁰;
- 367 (5) references¹¹ of licensing schemes¹²;
- 368 (6) applications¹³ with respect to licences under licensing schemes¹⁴;
- 369 (7) references or applications¹⁵ with respect to licensing by a licensing body¹⁶;
- 370 (8) applications¹⁷ to settle royalty for certain lending¹⁸; and
- 371 (9) applications¹⁹ to settle the terms of licences available as of right²⁰.

1 As to the Copyright Tribunal see PARA 207 ante.

2 Ie under the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended).

3 Ie under ibid s 182D (as added and amended): see PARA 652 post.

4 Ibid s 205B(1)(a) (s 205B added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 24(1); and the Copyright, Designs and Patents Act 1988 s 205B(1), (2) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8).

5 Ie under the Copyright, Designs and Patents Act 1988 s 190 (as amended): see PARA 653 et seq post.

6 Ibid s 205B(1)(b) (as added and amended: see note 4 supra).

7 Ie under ibid s 191H (as added): see PARA 657 post.

8 Ibid s 205B(1)(c) (as added and amended: see note 4 supra).

9 Ie under ibid s 189, Sch 2 para 19 (as substituted and amended): see PARA 700 post.

10 Ibid s 205B(1)(cc) (s 205B(1) as added and amended (see note 4 supra); and s 205B(1)(cc) added by the Broadcasting Act 1996 s 138, Sch 9 para 4).

11 Ie under the Copyright, Designs and Patents Act 1988 Sch 2A para 3 (as added) (see PARA 660 post), Sch 2A para 4 (as added) (see PARA 661 post) or Sch 2A para 5 (as added) (see PARA 662 post).

12 Ibid s 205B(1)(d) (as added and amended: see note 4 supra).

13 Ie under ibid Sch 2A para 6 (as added) (see PARA 663 post) or Sch 2A para 7 (as added) (see PARA 664 post).

14 Ibid s 205B(1)(e) (as added and amended: see note 4 supra).

15 Ie under ibid Sch 2A para 10 (as added) (see PARA 667 post), Sch 2A para 11 (as added) (see PARA 668 post) or Sch 2A para 12 (as added) (see PARA 669 post).

16 Ibid s 205B(1)(f) (as added and amended: see note 4 supra).

17 Ie under ibid Sch 2A para 15 (as added): see PARA 672 post.

18 Ibid s 205B(1)(g) (as added and amended: see note 4 supra).

19 Ie under ibid Sch 2A para 17 (as added): see PARA 673 post.

20 Ibid s 205B(1)(h) (as added and amended: see note 4 supra). The provisions of Pt I Ch VIII (ss 145-152) (as amended) (general provisions relating to the Copyright Tribunal: see PARA 207 et seq ante) apply in relation to the Tribunal when exercising any jurisdiction under Pt II Ch 2 (as amended): s 205B(2) (as so added and amended). Provision must be made by rules under s 150 (as amended) (see PARA 212 ante) prohibiting the Tribunal from entertaining a reference under Sch 2A para 3 (as added) (see PARA 660 post), Sch 2A para 4 (as added) (see PARA 661 post) or Sch 2A para 5 (as added) (see PARA 662 post) by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent: s 205B(3) (as added: see note 4 supra). As to such rules see PARAS 660-662 post.

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B. EQUITABLE REMUNERATION FOR EXPLOITATION OF SOUND RECORDINGS

652. Applications to settle equitable remuneration for exploitation of sound recording.

Where a person is entitled to equitable remuneration in respect of the exploitation of a sound recording¹, then, in default of agreement as to the amount payable, he or the person by whom it is payable may apply to the Copyright Tribunal² to determine the amount payable³.

A person to or by whom equitable remuneration is payable for the exploitation of a sound recording may also apply to the Tribunal to vary any agreement as to the amount payable⁴ or to vary any previous determination of the Tribunal as to that matter⁵; but, except with the special leave of the Tribunal, no such application may be made within 12 months from the date of a previous determination⁶. An order made on such an application for variation has effect from the date on which it is made or such later date as may be specified by the Tribunal⁷.

On an application under these provisions the Tribunal must consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the sound recording⁸.

1 Ie under the Copyright, Designs and Patents Act 1988 s 182D (as added and amended): see PARA 615 ante. For the meaning of 'sound recording' see PARA 84 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction to hear such an application see PARA 651 ante.

3 Copyright, Designs and Patents Act 1988 s 182D(4) (s 182D added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 20(1)).

4 Copyright, Designs and Patents Act 1988 s 182D(5)(a) (as added: see note 3 supra).

5 Ibid s 182D(5)(b) (as added: see note 3 supra).

6 Ibid s 182D(5) (as added: see note 3 supra).

7 Ibid s 182D(5) (as added: see note 3 supra).

8 Ibid s 182D(6) (as added: see note 3 supra). As to appeals against decisions of the Tribunal see PARA 309 ante.

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C. POWER TO GIVE CONSENT

653. Tribunal's power to give consent on behalf of performer in certain cases.

The Copyright Tribunal¹ may, on the application of a person wishing to make a copy of a recording² of a performance³, give consent in a case where the identity or whereabouts of the person entitled to the reproduction right⁴ cannot be ascertained by reasonable inquiry⁵.

Proceedings must be commenced by the service by the applicant on the secretary of the Tribunal of a notice in the prescribed form⁶ together with a statement of the inquiries made by the applicant as to the identity or whereabouts of the person entitled to the reproduction right and the result of those inquiries⁷.

A person who or organisation which claims to have a substantial interest in proceedings in respect of such an application may apply⁸ to the Tribunal to be made a party⁹.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction to hear such an application see PARA 651 ante.

2 For the meaning of 'recording' see PARA 608 ante.

3 For the meaning of 'performance' see PARA 607 ante.

4 For the meaning of 'reproduction right' see PARA 611 ante.

5 Copyright, Designs and Patents Act 1988 s 190(1) (substituted by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 23(1), (2)).

6 For the prescribed form of notice see the Copyright Tribunal Rules 1989, SI 1989/1129, r 34, Sch 3 Form 14. As to the use of forms see PARA 219 ante; and as to the service of documents see PARA 215 ante.

7 Ibid r 34(a).

8 Ie in accordance with ibid r 23: see PARA 257 ante.

9 Ibid r 37. Rule 23 applies to proceedings in respect of such an application as it applies to proceedings in respect of an application under r 20 (see PARA 255 ante): r 37.

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654. Notices to be given.

The Copyright Tribunal¹ must not give its consent² except after the service or publication of such notices as may be required³ or as the Tribunal may in any particular case direct⁴.

The Tribunal must⁵, after requiring of the applicant such further particulars as it may consider necessary, cause to be served on such persons as it considers are likely to have relevant information with regard to the identity or the whereabouts of the person entitled to the reproduction right a notice seeking such information, and at the same time cause to be published, in such publications as it considers appropriate and at such intervals as it may determine, a notice setting out brief particulars of the application and requesting information on the identity or whereabouts of the person entitled to the reproduction right⁶.

1 As to the Copyright Tribunal see PARA 207 ante.

2 Ie under the Copyright, Designs and Patents Act 1988 s 190(1) (as substituted): see PARA 653 ante.

3 Ie by rules made under ibid s 150 (as amended) (see PARA 212 ante): see the text to notes 5-6 infra.

4 Ibid s 190(3).

5 Ie where a notice has been served in accordance with the Copyright Tribunal Rules 1989, SI 1989/1129, r 34(a): see PARA 653 ante. As to the service of documents see PARA 215 ante.

6 Ibid r 35(1).

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655. Matters to be taken into account.

The Copyright Tribunal¹ must take into account² the following factors:

- 372 (1) whether the original recording³ was made with the performer's consent⁴ and is lawfully in the possession or control of the person proposing to make the further recording⁵;
- 373 (2) whether the making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original recording was made⁶.

1 As to the Copyright Tribunal see PARA 207 ante.

2 Ie on an application under the Copyright, Designs and Patents Act 1988 s 190(1) (as substituted): see PARA 653 ante.

3 For the meaning of 'recording' see PARA 608 ante.

4 As to consent see PARA 627 ante.

5 Copyright, Designs and Patents Act 1989 s 190(5)(a).

6 Ibid s 190(5)(b).

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656. Decision on application.

On the expiration of 28 days¹ from the date of the publication of the requisite notice², or the date of publication of the last such notice, the Copyright Tribunal³ may, on being satisfied that the identity or whereabouts of the person entitled to the reproduction right⁴ cannot be ascertained, make an order giving its consent on such terms as it thinks fit⁵. The final decision of the Tribunal must be given in writing and must include a statement of the Tribunal's reasons⁶; and the secretary of the Tribunal must as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision⁷.

Where the Tribunal gives consent, it must, in default of agreement between the applicant and the person entitled to the reproduction right, make such order as it thinks fit as to the payment to be made to that person in consideration of consent being given⁸. Where the Tribunal has made such an order as to the payment to be made to the person entitled to the reproduction right in consideration of the consent given on his behalf by the Tribunal, there must be annexed to the decision a copy of that order⁹.

1 As to the extension of time limits see PARA 216 ante.

2 I.e. the notice under the Copyright Tribunal Rules 1989, SI 1989/1129, r 35(1): see PARA 654 ante.

3 As to the Copyright Tribunal see PARA 207 ante.

4 For the meaning of 'reproduction right' see PARA 611 ante.

5 Copyright Tribunal Rules 1989, SI 1989/1129, r 35(2).

6 Ibid r 36(3). Rules 18 and 19 (see PARA 240 ante) apply with regard to the publication and the effective date of the decision: r 36(3). As to appeals against decisions of the Tribunal see PARA 309 ante.

7 Ibid r 36(3). As to the service of documents see PARA 215 ante.

8 Copyright, Designs and Patents Act 1988 s 190(6) (amended by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 23(1), (5)(a), (b)).

9 Copyright Tribunal Rules 1989, SI 1989/1129, r 36(3).

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D. EQUITABLE REMUNERATION ON TRANSFER OF RENTAL RIGHT

657. Application to settle equitable remuneration where rental right transferred.

Where a person has transferred his rental right¹ concerning a film² or sound recording³ to the producer of the sound recording or film, he remains entitled to equitable remuneration for the rental⁴. In default of agreement as to the amount so payable, the person by or to whom it is payable may apply to the Copyright Tribunal⁵ to determine the amount payable⁶.

A person to or by whom equitable remuneration is payable may also apply to the Tribunal to vary any agreement as to the amount payable⁷ or to vary any previous determination of the Tribunal as to that matter⁸; but, except with the special leave of the Tribunal, no such application may be made within 12 months from the date of a previous determination⁹. An order made on such an application for variation has effect from the date on which it is made or such later date as may be specified by the Tribunal¹⁰.

On an application under these provisions the Tribunal must consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the film or sound recording¹¹. Remuneration is not to be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right¹².

An agreement is of no effect in so far as it purports to prevent a person from questioning the amount of equitable remuneration or to restrict the powers of the Tribunal under these provisions¹³.

1 For the meaning of 'rental right' see PARA 613 ante. As to presumed transfer of rental right see PARAS 639-640 ante.

2 For the meaning of 'film' see PARA 86 ante.

3 For the meaning of 'sound recording' see PARA 84 ante.

4 Copyright, Designs and Patents Act 1988 s 191G(1) (ss 191G, 191H both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1)).

5 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction to hear such an application see PARA 651 ante.

6 Copyright, Designs and Patents Act 1988 s 191H(1) (as added: see note 4 supra). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under s 191H (as added).

7 Ibid s 191H(2)(a) (as added: see note 4 supra).

8 Ibid s 191H(2)(b) (as added: see note 4 supra).

9 Ibid s 191H(2) (as added: see note 4 supra).

10 Ibid s 191H(2) (as added: see note 4 supra).

11 Ibid s 191H(3) (as added: see note 4 supra).

12 Ibid s 191H(4) (as added: see note 4 supra).

13 Ibid s 191H(5) (as added: see note 4 supra).

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E. REFERENCES AND APPLICATIONS IN RELATION TO LICENSING SCHEMES

(A) REFERENCES

658. Types of licensing schemes subject to the Tribunal's control.

The jurisdiction¹ of the Copyright Tribunal² extends to licensing schemes³ operated by licensing bodies⁴ in relation to a performer's property rights⁵ which cover the performances⁶ of more than one performer, so far as they relate to licences for copying a recording⁷ of the whole or any substantial part of a qualifying performance⁸, making such a recording available⁹ to the public¹⁰, or renting¹¹ or lending¹² copies of a recording to the public¹³.

1 Ie under the Copyright, Designs and Patents Act 1988 s 205A, Sch 2A paras 3-8 (as added): see PARA 660 et seq post.

2 As to the Copyright Tribunal see PARA 207 ante; and as to the jurisdiction of the Tribunal generally see PARA 651 ante.

3 For the meaning of 'licensing scheme' see PARA 659 post. See also note 13 infra.

4 For the meaning of 'licensing body' see PARA 659 post.

5 For the meaning of 'performer's property rights' see PARA 633 ante.

6 For the meaning of 'performance' see PARA 607 ante.

7 For the meaning of 'recording' see PARA 608 ante.

8 Copyright, Designs and Patents Act 1988 Sch 2A para 2(a) (Sch 2A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, reg 22(2)). For the meaning of 'qualifying performance' see PARA 609 ante.

9 Ie in the way mentioned in the Copyright, Designs and Patents Act 1988 s 182CA(1) (as added): see PARA 614 ante.

10 Ibid Sch 2A para 2(aa) (Sch 2A as added (see note 8 supra); and Sch 2A para 2(aa) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 7(4)(b)).

11 For the meaning of 'rental' see PARA 613 ante.

12 For the meaning of 'lending' see PARA 613 ante.

13 Copyright, Designs and Patents Act 1988 Sch 2A para 2(b) (as added: see note 8 supra).

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659. Meanings of 'licensing scheme' and 'licensing body'.

A 'licensing scheme' means a scheme setting out:

- 374 (1) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant performers' property right licences¹; and
- 375 (2) the terms on which licences would be granted in those classes of case²,

and, for this purpose, a 'scheme' includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name³.

A 'licensing body' means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner⁴ of a performer's property rights or as agent for him, of performer's property right licences, and whose objects include the granting of licences covering the performances⁵ of more than one performer⁶.

1 Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 1(1)(a) (s 205A, Sch 2A both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22). 'Performer's property rights licences' means licences to do, or authorise the doing of, any of the things for which consent is required under the Copyright, Designs and Patents Act 1988 s 182A (as added) (see PARA 611 ante), s 182B (as added) (see PARA 612 ante), s 182C (as added) (see PARA 613 ante) or s 182CA (as added) (see PARA 614 ante); Sch 2A para 1(3) (as so added; and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 7(4) (a)). For the meaning of 'performer's property rights' see PARA 633 ante.

In the Copyright, Designs and Patents Act 1988 Sch 2A paras 3-8 (as added) (see PARAS 660-665 post), 'licensing scheme' means a licensing scheme of any of the descriptions mentioned in Sch 2A para 2 (as added): see Sch 2A para 2 (as added); and PARA 658 ante.

2 Ibid Sch 2A para 1(1)(b) (as added: see note 1 supra).

3 Ibid Sch 2A para 1(1) (as added (see note 1 supra); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9).

4 As to prospective ownership see PARA 638 ante.

5 For the meaning of 'performance' see PARA 607 ante.

6 Copyright, Designs and Patents Act 1988 Sch 2A para 1(2) (as added (see note 1 supra); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9). References to licences or licensing schemes covering the performances of more than one performer do not include licences or schemes covering only: (1) performances recorded in a single recording; (2) performances recorded in more than one recording where the performers giving the performance are the same or the recordings are made by, or by employees of, or are commissioned by, a single individual, firm or group of companies: Copyright, Designs and Patents Act 1988 Sch 2A para 1(4) (as so added and amended). For these purposes, 'group of companies' means a holding company and its subsidiaries within the meaning of the Companies Act 1985 s 736 (as substituted): Copyright, Designs and Patents Act 1988 Sch 2A para 1(4) (as so added and amended). For the meaning of 'recording' see PARA 608 ante.

UPDATE

659 Meanings of 'licensing scheme' and 'licensing body'

NOTE 6--Reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159 (see COMPANIES vol 14) (2009) PARA 25); Copyright, Designs and Patents Act 1988 Sch 2A para 1(4) (amended by SI 2009/1941).

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660. Reference of proposed licensing scheme to the Tribunal.

The terms of a licensing scheme¹ proposed to be operated by a licensing body² may be referred to the Copyright Tribunal³ by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case⁴.

The Tribunal must first decide whether to entertain the reference; and it may decline to do so on the ground that the reference is premature⁵. If the Tribunal decides to entertain the reference, it must consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable⁶ in the circumstances⁷. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁸.

1 For the meaning of 'licensing scheme' see PARA 659 ante.

2 For the meaning of 'licensing body' see PARA 659 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in such matters see PARA 651 ante.

4 Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 3(1) (s 205A, Sch 2A both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under the Copyright, Designs and Patents Act 1988 Sch 2A para 3 (as added).

5 Ibid Sch 2A para 3(2) (as added: see note 4 supra).

6 As to the criteria of reasonableness see PARA 671 post.

7 Copyright, Designs and Patents Act 1988 Sch 2A para 3(3) (as added: see note 4 supra). As to the effect of such an order see PARA 665 post. As to appeals against decisions of the Tribunal see PARA 309 ante.

8 Ibid Sch 2A para 3(4) (as added: see note 4 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(vii) Jurisdiction of the Copyright Tribunal/E. REFERENCES AND APPLICATIONS IN RELATION TO LICENSING SCHEMES/(A) References/661. Reference of licensing scheme to the Tribunal.

661. Reference of licensing scheme to the Tribunal.

If, while a licensing scheme¹ is in operation, a dispute arises between the operator of the scheme and a person claiming that he requires a licence in a case of a description to which the scheme applies² or an organisation claiming to be representative of such persons³, that person or organisation may refer the scheme to the Copyright Tribunal⁴, in so far as it relates to cases of that description⁵. A scheme which has been so referred to the Tribunal remains in operation until proceedings on the reference are concluded⁶.

The Tribunal must consider the matter in dispute and make such order, confirming or varying the scheme, so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable⁷ in the circumstances⁸. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁹.

1 For the meaning of 'licensing scheme' see PARA 659 ante.

2 Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 4(1)(a) (s 205A, Sch 2A both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22).

3 Copyright, Designs and Patents Act 1988 Sch 2A para 4(1)(b) (as added: see note 2 supra).

4 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in such matters see PARA 651 ante.

5 Copyright, Designs and Patents Act 1988 Sch 2A para 4(1) (as added: see note 2 supra). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under Sch 2A para 4 (as added).

6 Ibid Sch 2A para 4(2) (as added: see note 2 supra).

7 As to the criteria of reasonableness see PARA 671 post.

8 Copyright, Designs and Patents Act 1988 Sch 2A para 4(3) (as added: see note 2 supra). As to the effect of such an order see PARA 665 post. As to appeals against decisions of the Tribunal see PARA 309 ante.

9 Ibid Sch 2A para 4(4) (as added: see note 2 supra).

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662. Further reference of scheme to the Tribunal.

Where the Copyright Tribunal¹ has on a previous reference of a licensing scheme² made an order with respect to the scheme, then, while the order remains in force³:

- 376 (1) the operator of the scheme⁴;
- 377 (2) a person claiming that he requires a licence in a case of the description to which the order relates⁵; or
- 378 (3) an organisation claiming to be representative of such persons⁶,

may refer the scheme again to the Tribunal, so far as it relates to cases of that description⁷.

A licensing scheme may not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases within 12 months from the date of the order on the previous reference⁸ or, if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order⁹. A scheme which has been referred to the Tribunal under these provisions remains in operation until proceedings on the reference are concluded¹⁰.

The Tribunal must consider the matter in dispute and make such order, confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable¹¹ in the circumstances¹². The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine¹³.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in such matters see PARA 651 ante.

2 I.e. under the Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 3 (as added) (see PARA 660 ante) or Sch 2A para 4 (as added) (see PARA 661 ante). For the meaning of 'licensing scheme' see PARA 659 ante.

3 As to the period for which an order remains in force see PARAS 660-661 ante.

4 Copyright, Designs and Patents Act 1988 Sch 2A para 5(1)(a) (Sch 2A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22).

5 Copyright, Designs and Patents Act 1988 Sch 2A para 5(1)(b) (as added: see note 4 supra).

6 Ibid Sch 2A para 5(1)(c) (as added: see note 4 supra).

7 Ibid Sch 2A para 5(1) (as added: see note 4 supra). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under Sch 2A para 5 (as added).

8 Ibid Sch 2A para 5(2)(a) (as added: see note 4 supra).

9 Ibid Sch 2A para 5(2)(b) (as added: see note 4 supra).

10 Ibid Sch 2A para 5(3) (as added: see note 4 supra).

11 As to the criteria of reasonableness see PARA 671 post.

12 Copyright, Designs and Patents Act 1988 Sch 2A para 5(4) (as added: see note 4 supra). As to the effect of such an order see PARA 665 post. As to appeals against decisions of the Tribunal see PARA 309 ante.

13 Ibid Sch 2A para 5(5) (as added: see note 4 supra).

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(B) APPLICATIONS

663. Application for grant of licence in connection with licensing scheme.

A person who claims, in a case covered by a licensing scheme¹, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal².

A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme:

- 379 (1) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted³; or
- 380 (2) proposes terms for a licence which are unreasonable⁴,

may apply to the Tribunal⁵.

If the Tribunal is satisfied that the claim is well-founded, it must make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable⁶ in the circumstances⁷. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁸.

1 For the meaning of 'licensing scheme' see PARA 659 ante.

2 Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 6(1) (s 205A, Sch 2A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22). As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in such matters see PARA 651 ante. At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under the Copyright, Designs and Patents Act 1988 Sch 2A para 6 (as added).

3 Ibid Sch 2A para 6(2)(a) (as added: see note 2 supra).

4 Ibid Sch 2A para 6(2)(b) (as added: see note 2 supra).

5 Ibid Sch 2A para 6(2) (as added: see note 2 supra). A case is to be regarded as excluded from a licensing scheme if: (1) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception (Sch 2A para 6(3)(a) (as so added)); or (2) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way (Sch 2A para 6(3)(b) (as so added)).

6 As to the criteria of reasonableness see PARA 671 post.

7 Copyright, Designs and Patents Act 1988 Sch 2A para 6(4) (as added: see note 2 supra). As to the effect of such an order see PARA 665 post. As to the review of such orders see PARA 664 post.

8 Ibid Sch 2A para 6(5) (as added: see note 2 supra).

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664. Application for review of order as to entitlement to licence.

Where the Copyright Tribunal¹ has made an order² that a person is entitled to a licence under a licensing scheme³, the operator of the scheme or the original applicant may apply to the Tribunal to review its order⁴. An application must not be made, except with the special leave of the Tribunal within 12 months from the date of the order or of the decision on a previous application⁵ or, if the order was made so as to be in force for 15 months or less or as a result of the decision on a previous application is due to expire within 15 months of that decision, until the last three months before the expiry date⁶.

The Tribunal must on an application for review confirm or vary its order as the Tribunal may determine to be reasonable⁷, having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case⁸.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in such matters see PARA 651 ante.

2 le under the Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 6 (as added): see PARA 663 ante.

3 For the meaning of 'licensing scheme' see PARA 659 ante.

4 Copyright, Designs and Patents Act 1988 Sch 2A para 7(1) (Sch 2A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under the Copyright, Designs and Patents Act 1988 Sch 2A para 7 (as added).

5 Ibid Sch 2A para 7(2)(a) (as added: see note 4 supra).

6 Ibid Sch 2A para 7(2)(b) (as added: see note 4 supra).

7 As to the criteria of reasonableness see PARA 671 post.

8 Copyright, Designs and Patents Act 1988 Sch 2A para 7(3) (as added: see note 4 supra). As to appeals against decisions of the Tribunal see PARA 309 ante.

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665. Effect of Tribunal's order as to licensing scheme.

A licensing scheme¹ which has been confirmed or varied by the Copyright Tribunal² is in force or, as the case may be, remains in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force³.

While the order is in force, a person who in a case of a class to which the order applies:

- 381 (1) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained⁴; and
- 382 (2) complies with the other terms applicable to such a licence under the scheme⁵,

is in the same position as regards infringement of performer's property rights⁶ as if he had at all material times been the holder of a licence granted by the rights owner in question in accordance with the scheme⁷.

The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation⁸. If such a direction is made, any necessary repayments, or further payments, must be made in respect of charges already paid⁹; and the reference in head (1) above to the charges payable under the scheme is to be construed as a reference to the charges so payable by virtue of the order¹⁰.

An order of the Tribunal¹¹ made with respect to a scheme which is certified for any purpose¹² has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal¹³.

Where the Tribunal has made an order as to entitlement to a licence under a licensing scheme¹⁴ and the order remains in force, the person in whose favour the order is made is, if he:

- 383 (a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained¹⁵; and
- 384 (b) complies with the other terms specified in the order¹⁶,

is in the same position as regards infringement of performer's property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order¹⁷.

1 For the meaning of 'licensing scheme' see PARA 659 ante.

2 ie under the Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 3 (as added) (see PARA 660 ante) or Sch 2A para 4 (as added) (see PARA 661 ante) or Sch 2A para 5 (as added) (see PARA 662 ante). As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in these matters see PARA 651 ante.

3 Ibid Sch 2A para 8(1) (Sch 2A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22).

4 Copyright, Designs and Patents Act 1988 Sch 2A para 8(2)(a) (as added: see note 3 supra).

5 Ibid Sch 2A para 8(2)(b) (as added: see note 3 supra).

6 For the meaning of 'performer's property rights' see PARA 633 ante. As to the infringement of such rights see PARAS 611-613 ante.

7 Copyright, Designs and Patents Act 1988 Sch 2A para 8(2) (as added: see note 3 supra).

8 Ibid Sch 2A para 8(3) (as added: see note 3 supra). No such direction may be given where Sch 2A para 8(4) (as added) (see the text to notes 11-13 infra) applies: Sch 2A para 8(3) (as so added).

9 Ibid Sch 2A para 8(3)(a) (as added: see note 3 supra).

10 Ibid Sch 2A para 8(3)(b) (as added: see note 3 supra).

11 Ie an order under ibid Sch 2A para 4 (as added) (see PARA 661 ante) or Sch 2A para 5 (as added) (see PARA 662 ante).

12 Ie under ibid Sch 2A para 16 (as added and amended): see PARA 646 ante.

13 Ibid Sch 2A para 8(4) (as added: see note 3 supra).

14 Ie an order under ibid Sch 2A para 6 (as added): see PARA 663 ante.

15 Ibid Sch 2A para 8(5)(a) (as added: see note 3 supra).

16 Ibid Sch 2A para 8(5)(b) (as added: see note 3 supra).

17 Ibid Sch 2A para 8(5) (as added: see note 3 supra).

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(C) REFERENCES AND APPLICATIONS WITH RESPECT TO LICENSING BODIES

666. In general.

In addition to its jurisdiction in relation to licensing schemes¹, the Copyright Tribunal² has jurisdiction over licences relating to a performer's property rights³ which cover the performance⁴ of more than one performer granted by a licensing body⁵ otherwise than in pursuance of a licensing scheme, so far as the licences authorise:

- 385 (1) copying a recording⁶ of the whole or any substantial part of a qualifying performance⁷;
- 386 (2) making such a recording available⁸ to the public⁹; or
- 387 (3) renting¹⁰ or lending¹¹ copies of a recording to the public¹².

1 See PARA 658 et seq ante. For the meaning of 'licensing scheme' see PARA 659 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction generally see PARA 651 ante.

3 For the meaning of 'performer's property rights' see PARA 633 ante.

4 For the meaning of 'performance' see PARA 607 ante.

5 For the meaning of 'licensing body' see PARA 659 ante.

6 For the meaning of 'recording' see PARA 608 ante.

7 Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 9(a) (s 205A, Sch 2A both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22). For the meaning of 'qualifying performance' see PARA 609 ante.

8 In the way mentioned in the Copyright, Designs and Patents Act 1988 s 182CA(1) (as added): see PARA 614 ante.

9 Ibid Sch 2A para 9(aa) (Sch 2A as added (see note 7 supra); and Sch 2A para 9(aa) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 7(4)(b)).

10 For the meaning of 'rental' see PARA 613 ante.

11 For the meaning of 'lending' see PARA 613 ante.

12 Copyright, Designs and Patents Act 1988 Sch 2A para 9(b) (as added: see note 7 supra). References in Sch 2A paras 10-13 (as added) (see PARAS 667-670 post) to a licence are to be construed accordingly: Sch 2A para 9 (as so added).

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667. Reference to Tribunal of proposed licence.

The terms on which a licensing body¹ proposes to grant a licence² may be referred to the Copyright Tribunal³ by the prospective licensee⁴.

The Tribunal must first decide whether to entertain the reference; and it may decline to do so on the ground that the reference is premature⁵. If the Tribunal decides to entertain the reference, it must consider the terms of the proposed licence and make such order confirming or varying the terms as it may determine to be reasonable⁶ in the circumstances⁷. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁸.

1 For the meaning of 'licensing body' see PARA 659 ante.

2 As to references to licences see PARA 666 note 12 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in these matters see PARA 651 ante.

4 Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 10(1) (s 205A, Sch 2A both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under the Copyright, Designs and Patents Act 1988 Sch 2A para 10 (as added).

5 Ibid Sch 2A para 10(2) (as added: see note 4 supra).

6 As to the criteria of reasonableness see PARA 671 post.

7 Copyright, Designs and Patents Act 1988 Sch 2A para 10(3) (as added: see note 4 supra). As to the effect of such an order see PARA 670 post. As to applications for the review of such an order see PARA 669 post.

8 Ibid Sch 2A para 10(4) (as added: see note 4 supra).

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668. Reference to Tribunal of expiring licence.

A licensee under a licence¹ which is due to expire, by effluxion of time or as a result of notice given by the licensing body², may apply to the Copyright Tribunal³ on the ground that it is unreasonable in the circumstances that the licence should cease to be in force⁴. Such an application may not be made until the last three months before the licence is due to expire⁵. A licence in respect of which a reference has been made to the Tribunal remains in operation until proceedings on the reference are concluded⁶.

If the Tribunal finds the application well-founded, it must make an order declaring that the licensee is to continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable⁷ in the circumstances⁸. An order of the Tribunal under these provisions may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁹.

1 As to references to licences see PARA 666 note 12 ante.

2 For the meaning of 'licensing body' see PARA 659 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in these matters see PARA 651 ante.

4 Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 11(1) (s 205A, Sch 2A both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under the Copyright, Designs and Patents Act 1988 Sch 2A para 11 (as added).

5 Ibid Sch 2A para 11(2) (as added: see note 4 supra).

6 Ibid Sch 2A para 11(3) (as added: see note 4 supra).

7 As to the criteria of reasonableness see PARA 671 post.

8 Copyright, Designs and Patents Act 1988 Sch 2A para 11(4) (as added: see note 4 supra). As to the effect of such an order see PARA 670 post. As to applications for the review of such an order see PARA 669 post.

9 Ibid Sch 2A para 11(5) (as added: see note 4 supra).

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669. Application for review of order as to licence.

Where the Copyright Tribunal¹ has made an order as to a licence², the licensing body³ or the person entitled to the benefit of the order may apply to the Tribunal to review its order⁴. An application may not be made, except with the special leave of the Tribunal, within 12 months from the date of the order or of the decision on a previous application⁵ or, if the order was made so as to be in force for 15 months or less or as a result of the decision on a previous application is due to expire within 15 months of that decision, until the last three months before the expiry date⁶.

The Tribunal must on an application for review confirm or vary its order as the Tribunal may determine to be reasonable⁷ in the circumstances⁸.

¹ As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in these matters see PARA 651 ante.

² See under the Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 10 (as added) (see PARA 667 ante) or Sch 2A para 11 (as added) (see PARA 668 ante). As to references to licences see PARA 666 note 12 ante.

³ For the meaning of 'licensing body' see PARA 659 ante.

⁴ Copyright, Designs and Patents Act 1988 Sch 2A para 12(1) (Sch 2A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under the Copyright, Designs and Patents Act 1988 Sch 2A para 12 (as added).

⁵ Ibid Sch 2A para 12(2)(a) (as added: see note 4 supra).

⁶ Ibid Sch 2A para 12(2)(b) (as added: see note 4 supra).

⁷ As to the criteria of reasonableness see PARA 671 post.

⁸ Copyright, Designs and Patents Act 1988 Sch 2A para 12(3) (as added: see note 4 supra). As to the effect of such an order see PARA 670 post. As to appeals against decisions of the Tribunal see PARA 309 ante.

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670. Effect of order of Tribunal as to licence.

Where the Copyright Tribunal¹ has made an order as to a licence² and the order remains in force, the person entitled to the benefit of the order is, if he:

- 388 (1) pays to the licensing body³ any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained⁴; and
- 389 (2) complies with the other terms specified in the order⁵,

in the same position as regards infringement of performer's property rights⁶ as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order⁷.

The benefit of the order may be assigned: (a) in the case of an order in respect of a proposed licence⁸, if assignment is not prohibited under the terms of the Tribunal's order⁹; and (b) in the case of an order in respect of an expiring licence¹⁰, if assignment was not prohibited under the terms of the original licence¹¹.

The Tribunal may direct that an order in respect of a proposed or expiring licence¹², or an order in respect of the review of a licence¹³ varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire¹⁴. If such a direction is made, any necessary repayments, or further payments, must be made in respect of charges already paid¹⁵.

1 As to the Copyright Tribunal see PARA 207 ante.

2 Ie under the Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 10 (as added) (see PARA 667 ante) or Sch 2A para 11 (as added) (see PARA 668 ante). As to references to licences see PARA 666 note 12 ante.

3 For the meaning of 'licensing body' see PARA 659 ante.

4 Copyright, Designs and Patents Act 1988 Sch 2A para 13(1)(a) (Sch 2A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22). See note 15 infra.

5 Copyright, Designs and Patents Act 1988 Sch 2A para 13(1)(b) (as added: see note 4 supra).

6 For the meaning of 'performer's property rights' see PARA 633 ante. As to infringement of such rights see PARAS 616-617 ante.

7 Copyright, Designs and Patents Act 1988 Sch 2A para 13(1) (as added: see note 4 supra).

8 Ie an order under ibid Sch 2A para 10 (as added): see PARA 667 ante.

9 Ibid Sch 2A para 13(2)(a) (as added: see note 4 supra).

10 Ie an order under ibid Sch 2A para 11 (as added): see PARA 668 ante.

11 Ibid Sch 2A para 13(2)(b) (as added: see note 4 supra).

12 le an order under ibid Sch 2A para 10 (as added) (see PARA 667 ante) or Sch 2A para 11 (as added) (see PARA 668 ante).

13 le an order under ibid Sch 2A para 12 (as added): see PARA 669 ante.

14 Ibid Sch 2A para 13(3) (as added: see note 4 supra).

15 Ibid Sch 2A para 13(3)(a) (as added: see note 4 supra). The reference in Sch 2A para 13(1)(a) (as added) (see head (1) in the text) to the charges payable in accordance with the order is to be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order: Sch 2A para 13(3)(b) (as so added).

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(D) CRITERIA AS TO REASONABLENESS

671. Criteria as to reasonableness.

In determining what is reasonable on a reference or application relating to a licensing scheme¹ or licence, the Copyright Tribunal² must have regard to:

- 390 (1) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances³; and
- 391 (2) the terms of those schemes or licences⁴,

and it must exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licences under other schemes operated by, or other licences granted by, the same person⁵.

This does not affect the Tribunal's general obligation in any case to have regard to all relevant circumstances⁶.

1 For the meaning of 'licensing scheme' see PARA 659 ante.

2 As to the Copyright Tribunal see PARA 207 ante.

3 Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 14(1)(a) (s 205A, Sch 2A both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22).

4 Copyright, Designs and Patents Act 1988 Sch 2A para 14(1)(b) (as added: see note 3 supra).

5 Ibid Sch 2A para 14(1) (as added: see note 3 supra).

6 Ibid Sch 2A para 14(2) (as added: see note 3 supra).

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(E) ROYALTIES FOR CERTAIN LENDING

672. Application to settle royalty or other sum payable for lending certain recordings.

An application¹ to settle the royalty or other sum payable in respect of lending² certain recordings³ may be made to the Copyright Tribunal⁴ by the owner of a performer's property rights⁵ or the person claiming to be treated as licensed by him⁶. The Tribunal must consider the matter and make such order as it may determine to be reasonable⁷ in the circumstances⁸.

Either party may subsequently apply to the Tribunal to vary the order; and the Tribunal must consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances⁹. Such an application may not, except with the special leave of the Tribunal, be made within 12 months from the date of the original order or of the order on a previous application¹⁰. An order confirming or varying the original order has effect from the date on which it is made or such later date as may be specified by the Tribunal¹¹.

1 In pursuance of the Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 14A (as added): see PARA 693 post.

2 For the meaning of 'lending' see PARA 613 ante.

3 For the meaning of 'recording' see PARA 608 ante.

4 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in these matters see PARA 651 ante.

5 For the meaning of 'performer's property rights' see PARA 633 ante.

6 Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 15(1) (s 205A, Sch 2A both added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under the Copyright, Designs and Patents Act 1988 Sch 2A para 15 (as added).

7 As to the criteria of reasonableness see PARA 671 post.

8 Copyright, Designs and Patents Act 1988 Sch 2A para 15(2) (as added: see note 6 supra). As to appeals against decisions of the Tribunal see PARA 309 ante.

9 Ibid Sch 2A para 15(3) (as added: see note 6 supra).

10 Ibid Sch 2A para 15(4) (as added: see note 6 supra).

11 Ibid Sch 2A para 15(5) (as added: see note 6 supra).

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(F) TERMS OF LICENCES OF RIGHT

673. Application to settle terms of licences of right.

Where a licence of right is available¹ in respect of a performer's property rights², the terms of the licence must, in default of agreement, be settled by the Copyright Tribunal³ on an application by the person requiring the licence⁴. The terms so settled must authorise the licensee to do everything in respect of which a licence is so available⁵. Where the terms of the licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made⁶.

1 I.e. pursuant to the Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 17(1) (s 205A as added; Sch 2A para 17 as added and substituted) (licences of right available in consequence of report of the Competition Commission): see PARA 647 ante.

2 For the meaning of 'performer's property rights' see PARA 633 ante.

3 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in these matters see PARA 651 ante.

4 Copyright, Designs and Patents Act 1988 Sch 2A para 17(4) (Sch 2A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 22). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under the Copyright, Designs and Patents Act 1988 Sch 2A para 17 (as added). As to appeals against decisions of the Tribunal see PARA 309 ante.

5 Ibid Sch 2A para 17(4) (as added: see note 4 supra).

6 Ibid Sch 2A para 17(5) (as added: see note 4 supra).

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(G) ROYALTIES PAYABLE FOR RETRANSMISSION OF BROADCASTS

674. Royalty or other sum payable for the reception and retransmission of wireless broadcast by cable.

An application¹ to settle the royalty or other sum payable in respect of the retransmission by cable of any performance² or recording³ included in a wireless broadcast⁴ may be made to the Copyright Tribunal⁵ by the owner of any of the economic rights in the performance⁶ or the person making the broadcast⁷. The Tribunal must consider the matter and make such order as it may determine to be reasonable in the circumstances⁸.

Either party may subsequently apply to the Tribunal to vary the order; and the Tribunal must consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances⁹. Such an application must not, except with the special leave of the Tribunal, be made within 12 months from the date of the original order or of the order on a previous such application¹⁰. An order confirming or varying the original order has effect from the date on which it is made or such later date as may be specified by the Tribunal¹¹.

1 le pursuant to the Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 19(3) (as substituted and amended): see PARA 700 post.

2 For the meaning of 'performance' see PARA 607 ante.

3 For the meaning of 'recording' see PARA 608 ante.

4 For the meaning of 'wireless broadcast' see PARA 88 note 8 ante.

5 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction in these matters see PARA 651 ante.

6 le the rights conferred by the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

7 Ibid Sch 2 para 19A(1) (Sch 2 para 19A added by the Broadcasting Act 1996 s 138, Sch 9 para 6; and the Copyright, Designs and Patents Act 1988 Sch 2 para 19A(1) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under the Copyright, Designs and Patents Act 1988 Sch 2 para 19A (as added and amended).

8 Ibid Sch 2 para 19A(2) (as added: see note 7 supra).

9 Ibid Sch 2 para 19A(3) (as added: see note 7 supra).

10 Ibid Sch 2 para 19A(4) (as added: see note 7 supra).

11 Ibid Sch 2 para 19A(5) (as added: see note 7 supra).

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(H) REMUNERATION FOR REVIVED PERFORMANCE RIGHTS

675. Application to the Tribunal.

An application to settle the remuneration payable in respect of user as of right¹ in the case of a performance² in which revived performance rights³ subsist may be made to the Copyright Tribunal⁴ by the rights owner⁵ or the person claiming to be treated as having his consent⁶. The Tribunal must consider the matter and must make such order as it may determine to be reasonable in the circumstances⁷.

Either party may subsequently apply to the Tribunal to vary the order; and the Tribunal must consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances⁸. Such an application must not, except with the special leave of the Tribunal, be made within 12 months from the date of the original order or of the order on a previous such application⁹. An order confirming or varying the original order has effect from the date on which it is made or such later date as may be specified by the Tribunal¹⁰.

1 Ie pursuant to the Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 34: see PARA 650 ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 For the meaning of 'revived performance rights' see PARA 630 ante.

4 As to the Copyright Tribunal see PARA 207 ante.

5 For the meaning of 'rights owner' see PARA 650 ante.

6 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297, reg 35(1). At the date at which this volume states the law there are no statutory provisions governing the procedure on an application to the Tribunal under reg 35.

7 Ibid reg 35(2).

8 Ibid reg 35(3).

9 Ibid reg 35(4).

10 Ibid reg 35(5).

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(viii) Permitted Acts

A. IN GENERAL

676. In general.

A defendant in a claim for the infringement of performer's rights may plead any defence which is generally available in tort, including the defence that the claim is barred by acquiescence or delay or that the enforcement of the right is contrary to the EC Treaty¹.

In addition, provisions of the Copyright, Designs and Patents Act 1988² specify acts which may be done in relation to a performance³ or recording⁴ notwithstanding the performer's economic rights or the rights of persons having recording rights⁵; they relate only to the question of infringement of those rights⁶ and do not affect any other right or obligation restricting the doing of any of the specified acts⁷. No inference is to be drawn from the description of any act which may⁸ be done without infringing those rights as to the scope of those rights⁹. The provisions are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision¹⁰.

1 See PARA 409 ante.

2 I.e. the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 677 et seq post. The provisions of Sch 2 (as amended) specify acts which may be done notwithstanding the rights conferred by Pt II Ch 2 (ss 182-205B) (as amended), being acts which correspond broadly to those specified in Pt I Ch III (ss 28-76) (as amended) (acts permitted notwithstanding copyright: see PARA 337 et seq ante): s 189 (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8).

3 For the meaning of 'performance' see PARA 607 ante.

4 For the meaning of 'recording' see PARA 608 ante.

5 I.e. the rights conferred by the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (as amended): see PARA 610 et seq ante.

6 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

7 Copyright, Designs and Patents Act 1988 Sch 2 para 1(1) (Sch 2 para 1(1), (2) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9).

8 I.e. by virtue of the Copyright, Designs and Patents Act 1988 Sch 2 (as amended).

9 Ibid Sch 2 para 1(2) (as amended: see note 7 supra).

10 Ibid Sch 2 para 1(3).

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B. FAIR DEALING

677. Criticism, reviews and news reporting.

Fair dealing¹ with a performance² or recording³ for the purpose of criticism or review, of that or another performance or recording, or of a work, does not infringe⁴ any of the rights conferred by the provisions⁵ relating to economic rights in performances provided that the performance or recording has been made available to the public⁶.

Likewise, fair dealing with a performance or recording for the purpose of reporting current events does not infringe any of those rights⁷.

1 As to fair dealing generally see PARA 340 ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 For the meaning of 'recording' see PARA 608 ante.

4 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

5 I.e. the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

6 Ibid s 189, Sch 2 para 2(1) (Sch 2 para 2(1) substituted, and Sch 2 para 2(1A) added, by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 10(2); and the Copyright, Designs and Patents Act 1988 Sch 2 para 2(1) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 2 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 2 (as amended) have the same meaning as in s 30 (see PARA 339 ante): Sch 2 para 2(2). As to fair dealing with a copyright work for the purposes of criticism or review see PARA 339 ante.

7 Ibid Sch 2 para 2(1A) (as added: see note 6 supra). As to fair dealing with a copyright work for the purpose of reporting current events see PARA 339 ante.

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C. TEMPORARY COPIES AND INCIDENTAL INCLUSION

678. Making of temporary copies.

The rights conferred by the provisions¹ relating to economic rights in performances² are not infringed³ by the making of a temporary copy of a recording⁴ of a performance which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable:

- 392 (1) a transmission of the recording in a network between third parties by an intermediary⁵; or
- 393 (2) a lawful use of the recording⁶,

and which has no independent economic significance⁷.

1 I.e. the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

4 For the meaning of 'recording' see PARA 608 ante.

5 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 1A(a) (Sch 2 para 1A added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 8(2)). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 1A (as added) see PARA 676 ante.

6 Ibid Sch 2 para 1A(b) (as added: see note 5 supra).

7 Ibid Sch 2 para 1A (as added (see note 5 supra); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9).

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679. Incidental inclusion of performance or recording.

The rights conferred by the provisions¹ relating to economic rights in performances² are not infringed³ by the incidental inclusion⁴ of a performance or recording in a sound recording, film⁵ or broadcast⁶. Nor are those rights infringed by anything done in relation to copies of, or the playing, showing or communication to the public⁷ of, anything whose making was⁸ not an infringement of those rights⁹.

1 Ie the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

4 A performance or recording so far as it consists of music, or words spoken or sung with music, is not to be regarded as incidentally included in a sound recording or broadcast if it is deliberately included: Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 3(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(1)(m)). For the meaning of 'recording' see PARA 608 ante; for the meaning of 'sound recording' see PARA 84 ante; and for the meaning of 'broadcast' see PARA 89 ante.

5 For the meaning of 'film' see PARA 86 ante.

6 Copyright, Designs and Patents Act 1988 Sch 2 para 3(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 3(1)(l); and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 3 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 3 (as amended) have the same meaning as in s 31 (as amended) (see PARA 342 ante): Sch 2 para 3(4).

7 For the meaning of 'communication to the public' see PARA 326 ante.

8 Ie by virtue of the Copyright, Designs and Patents Act 1988 Sch 2 para 3(1) (as amended): see the text to notes 1-6 supra.

9 Ibid Sch 2 para 3(2) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 1 Pt 1 paras 1, 6(2)(e)).

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D. EDUCATION

680. Things done for purposes of instruction or examination.

The rights conferred by the provisions¹ relating to economic rights in performances² are not infringed³ by the copying of a recording⁴ of a performance in the course of instruction, or of preparation for instruction, in the making of films⁵ or film soundtracks, provided that the copying is done by a person giving or receiving instruction and the instruction is for a non-commercial purpose⁶. Nor are those rights infringed:

- 394 (1) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination⁷; or
- 395 (2) by anything done for the purposes of an examination by way of communicating the questions to the candidates⁸.

Where a recording which would otherwise be an illicit recording⁹ is made in accordance with these provisions but is subsequently dealt with¹⁰, it is to be treated as an illicit recording for the purposes of that dealing, and, if that dealing infringes any of the economic rights in performances, for all subsequent purposes¹¹.

1 In the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

4 For the meaning of 'recording' see PARA 608 ante.

5 For the meaning of 'film' see PARA 86 ante.

6 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 4(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 11(2)(a); and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 4 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 4 (as amended) have the same meaning as in s 32 (as amended) (see PARA 347 ante): Sch 2 para 4(4).

7 Ibid Sch 2 para 4(2)(a) (Sch 2 para 4(2) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9).

8 Copyright, Designs and Patents Act 1988 Sch 2 para 4(2)(b) (as amended: see note 7 supra).

9 For the meaning of 'illicit recording' see PARAS 618, 625 ante.

10 For this purpose 'dealt with' means sold or let for hire, offered or exposed for sale or hire, or communicated to the public, unless that communication, by virtue of the Copyright, Designs and Patents Act 1988 Sch 2 para 4(2)(b) (as amended) (see the text to note 8 supra), is not an infringement of the rights conferred by Pt II (ss 180-212) (as amended) (rights in performances): Sch 2 para 4(3) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 11(2)(b)). As to the meaning of 'sell' see PARA 330 note 6 ante; as to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante; and for the meaning of 'communication to the public' see PARA 326 ante.

11 Copyright, Designs and Patents Act 1988 Sch 2 para 4(3) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9).

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681. Playing or showing sound recording, film or broadcast at educational establishment.

The playing or showing of a sound recording¹, film² or broadcast³ at an educational establishment⁴ for the purposes of instruction before an audience consisting of teachers⁵ and pupils⁶ at the establishment and other persons directly connected with the activities of the establishment⁷ is not a playing or showing of a performance⁸ in public for the purposes of infringement⁹ of the rights conferred by the provisions¹⁰ relating to economic rights in performances¹¹.

1 For the meaning of 'sound recording' see PARA 84 ante.

2 For the meaning of 'film' see PARA 86 ante.

3 For the meaning of 'broadcast' see PARA 89 ante.

4 For the meaning of 'educational establishment' see PARA 190 ante.

5 For the meaning of 'teacher' see PARA 190 note 7 ante.

6 For the meaning of 'pupil' see PARA 190 note 7 ante.

7 A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment: Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 5(2).

8 For the meaning of 'performance' see PARA 607 ante.

9 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

10 I.e the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

11 Ibid Sch 2 para 5(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 3(1)(n); and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 5 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 5 (as amended) have the same meaning as in s 34 (as amended) (see PARA 349 ante); and any provision made under s 174(2) (see PARA 190 ante) with respect to the application of s 174 (see PARA 190 note 8 ante) also applies for the purposes of Sch 2 para 5 (as amended): Sch 2 para 5(3).

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682. Recording of broadcasts by educational establishments.

A recording¹ of a broadcast², or a copy of such a recording, may be made by or on behalf of an educational establishment³ for the educational purposes of that establishment without thereby infringing⁴ any of the rights conferred by the provisions⁵ relating to economic rights in performances⁶ in relation to any performance or recording included in it, provided that the educational purposes are non-commercial⁷. Nor are those rights infringed where a recording of a broadcast or a copy of such a recording, whose making was⁸ not an infringement of such rights, is communicated to the public⁹ by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment¹⁰.

Where a recording which would otherwise be an illicit recording¹¹ is made in accordance with these provisions but is subsequently dealt with¹², it is to be treated as an illicit recording for the purposes of that dealing, and, if that dealing infringes any of the economic rights in performances, for all subsequent purposes¹³.

These provisions do not apply if or to the extent that there is a licensing scheme certified for these purposes¹⁴ providing for the grant of licences¹⁵.

1 For the meaning of 'recording' see PARA 608 ante.

2 For the meaning of 'broadcast' see PARA 89 ante.

3 For the meaning of 'on behalf of an educational establishment' see PARA 190 ante.

4 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

5 I.e. the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

6 For the meaning of 'performance' see PARA 607 ante.

7 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 6(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 2(2), 3, 12(2)(a), Sch 2; and by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 6 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 6 (as amended) have the same meaning as in s 35 (as amended) (see PARA 350 ante); and any provision made under s 174(2) (see PARA 190 ante) with respect to the application of s 174 (see PARA 190 note 8 ante) also applies for the purposes of Sch 2 para 6 (as amended): Sch 2 para 6(3).

8 I.e. by virtue of ibid Sch 2 para 6(1) (as amended): see the text to notes 1-7 supra.

9 For the meaning of 'communication to the public' see PARA 326 ante.

10 Copyright, Designs and Patents Act 1988 Sch 2 para 6(1A) (Sch 2 para 6(1A), (1B) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 12(2)(b); and the Copyright, Designs and Patents Act 1988 Sch 2 para 6(1A) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9).

11 For the meaning of 'illicit recording' see PARAS 618, 625 ante.

12 For this purpose, 'dealt with' means sold or let for hire, offered or exposed for sale or hire, or communicated from within the premises of an educational establishment to any person situated outside those premises: Copyright, Designs and Patents Act 1988 Sch 2 para 6(2) (amended by the Copyright and Related

Rights Regulations 2003, SI 2003/2498, regs 3, 12(2)(c)). As to the meaning of 'sell' see PARA 330 note 6 ante; and as to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante.

13 Copyright, Designs and Patents Act 1988 Sch 2 para 6(2) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9).

14 Ie certified for the purposes of the Copyright, Designs and Patents Act 1988 Sch 2 para 6 (as amended) under Sch 2A para 16 (as added and amended): see PARA 646 ante.

15 Ibid Sch 2 para 6(1B) (as added: see note 10 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(viii) Permitted Acts/D. EDUCATION/683. Lending of copies by educational establishments.

683. Lending of copies by educational establishments.

The rights conferred by the provisions¹ relating to economic rights in performances² are not infringed³ by the lending⁴ of copies of a recording⁵ of a performance by an educational establishment⁶.

1 In the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended); see PARA 610 et seq ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

4 For the meaning of 'lending' see PARA 613 ante.

5 For the meaning of 'recording' see PARA 608 ante.

6 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 6A(1) (Sch 2 para 6A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 20(3); and the Copyright, Designs and Patents Act 1988 Sch 2 para 6A(1) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). Expressions used in the Copyright, Designs and Patents Act 1988 Sch 2 para 6A (as added and amended) have the same meaning as in s 36A (as added) (see PARA 352 ante); and any provision made under s 174(2) (see PARA 190 ante) with respect to the application of s 174 (see PARA 190 note 8 ante) also applies for the purposes of Sch 2 para 6A (as added and amended): Sch 2 para 6A(2) (as so added). For the meaning of 'educational establishment' see PARA 190 ante. As to the application of Sch 2 para 6A (as added and amended) see PARA 676 ante.

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684. Lending of copies by libraries or archives.

The rights conferred by the provisions¹ relating to economic rights in performances² are not infringed³ by the lending⁴ of copies of a recording⁵ of a performance by a prescribed library or archive⁶, other than a public library⁷, which is not conducted for profit⁸.

¹ ie the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended); see PARA 610 et seq ante.

² For the meaning of 'performance' see PARA 607 ante.

³ As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

⁴ For the meaning of 'lending' see PARA 613 ante.

⁵ For the meaning of 'recording' see PARA 608 ante.

⁶ For the meaning of 'prescribed library' see PARA 354 ante; and for the meaning of 'prescribed archive' see PARA 355 ante.

⁷ For the meaning of 'public library' see PARA 358 note 3 ante.

⁸ Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 6B(1) (Sch 2 para 6B added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 20(3); and the Copyright, Designs and Patents Act 1988 Sch 2 para 6B(1) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 6B (as added and amended) see PARA 676 ante. Expressions used in Sch 2 para 6B (as added and amended) have the same meaning as in s 40A(2) (as added) (see PARA 358 ante); and any provision under s 37 (see PARA 353 ante) prescribing libraries or archives for the purposes of s 37 also applies for the purposes of Sch 2 para 6B (as added and amended): Sch 2 para 6B(2) (as so added).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(viii) Permitted Acts/D. EDUCATION/685. Copy of work required to be made as condition of export.

685. Copy of work required to be made as condition of export.

If an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom¹ unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement² of any of the rights conferred by the provisions³ relating to economic rights in performances⁴ to make that copy⁵.

1 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

2 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

3 Ie the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

4 For the meaning of 'performance' see PARA 607 ante.

5 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 7(1) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 7 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 7 (as amended) have the same meaning as in s 44 (see PARA 363 ante): Sch 2 para 7(2).

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E. PUBLIC ADMINISTRATION

686. Parliamentary and judicial proceedings.

The rights conferred by the provisions¹ relating to economic rights in performances² are not infringed³ by anything done for the purposes of Parliamentary⁴ or judicial⁵ proceedings or for the purpose of reporting such proceedings⁶.

1 In the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

4 For the meaning of 'Parliamentary proceedings' see PARA 365 note 2 ante.

5 For the meaning of 'judicial proceedings' see PARA 365 note 3 ante.

6 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 8(1) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 8 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 8 (as amended) have the same meaning as in s 45 (see PARA 365 ante): Sch 2 para 8(2).

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687. Royal Commissions and statutory inquiries.

The rights conferred by the provisions¹ relating to economic rights in performances² are not infringed³ by anything done for the purposes of the proceedings of a Royal Commission⁴ or statutory inquiry⁵ or for the purpose of reporting any such proceedings held in public⁶.

1 Ie the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended); see PARA 610 et seq ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

4 For the meaning of 'Royal Commission' see PARA 366 note 2 ante.

5 For the meaning of 'statutory inquiry' see PARA 366 note 3 ante.

6 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 9(1) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 9 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 9 (as amended) have the same meaning as in s 46 (see PARA 366 ante): Sch 2 para 9(2).

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688. Public records.

Material which is comprised in public records¹ which are open to public inspection² may be copied, and a copy may be supplied to any person, by or with the authority of any officer duly appointed³ without infringing⁴ any of the rights conferred by the provisions⁵ relating to economic rights in performances⁶.

1 le public records within the meaning of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923, or Welsh public records (as defined in the Government of Wales Act 1998): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835 et seq.

2 le in pursuance of the Public Records Act 1958, the Public Records (Scotland) Act 1937, the Public Records Act (Northern Ireland) 1923 or the Government of Wales Act 1998, as the case may be.

3 le under the Public Records Act 1958, the Public Records (Scotland) Act 1937, the Public Records Act (Northern Ireland) 1923 or the Government of Wales Act 1998, as the case may be.

4 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

5 le the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

6 Ibid s 189, Sch 2 para 10(1) (amended by the Government of Wales Act 1998 s 125, Sch 12 para 29; and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 10 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 10 (as amended) have the same meaning as in s 49 (as amended) (see PARA 369 ante): Sch 2 para 10(2).

UPDATE

688 Public records

NOTES--Welsh public records are now defined in the Government of Wales Act 2006, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835A.

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689. Acts done under statutory authority.

Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe¹ any of the rights conferred by the provisions² relating to economic rights in performances³.

Nothing in these provisions is to be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment⁴.

1 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

2 I.e the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended); see PARA 610 et seq ante.

3 Ibid s 189, Sch 2 para 11(1) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). The Copyright, Designs and Patents Act 1988 Sch 2 para 11(1) (as amended) applies in relation to an enactment contained in Northern Ireland legislation as it applies to an Act of Parliament: Sch 2 para 11(2). As to the application of Sch 2 para 11 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 11 (as amended) have the same meaning as in s 50 (see PARA 370 ante): Sch 2 para 11(4).

4 Ibid Sch 2 para 11(3).

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F. WORKS IN ELECTRONIC FORM

690. Transfer of copies of works in electronic form.

The following provisions apply where a recording¹ of a performance² in electronic form³ has been purchased⁴ on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further recordings in connection with his use of the recording⁵.

If there are no express terms:

- 396 (1) prohibiting the transfer of the recording by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent on a transfer⁶; or
- 397 (2) providing for the terms on which a transferee may do the things which the purchaser was permitted to do⁷,

anything which the purchaser was allowed to do may also be done by a transferee without infringement⁸ of any of the rights conferred by the provisions⁹ relating to economic rights in performances; but any recording made by the purchaser which is not also transferred is to be treated as an illicit recording¹⁰ for all purposes after the transfer¹¹. The same applies where the original purchased recording is no longer usable and what is transferred is a further copy¹² used in its place¹³. These provisions also apply on a subsequent transfer¹⁴.

1 For the meaning of 'recording' see PARA 608 ante.

2 For the meaning of 'performance' see PARA 609 ante.

3 For the meaning of 'in electronic form' see PARA 184 note 2 ante.

4 The Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 12 (as amended) does not apply in relation to a recording purchased before 1 August 1989: Sch 2 para 12(5) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9).

5 Copyright, Designs and Patents Act 1988 Sch 2 para 12(1). As to the application of Sch 2 para 12 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 12 (as amended) have the same meaning as in s 56 (see PARA 383 ante): Sch 2 para 12(6).

6 Ibid Sch 2 para 12(2)(a).

7 Ibid Sch 2 para 12(2)(b).

8 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

9 Ie the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

10 For the meaning of 'illicit recording' see PARAS 618, 625 ante.

11 Copyright, Designs and Patents Act 1988 Sch 2 para 12(2) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 8).

12 For the meaning of 'copy' see PARA 314 ante.

13 Copyright, Designs and Patents Act 1988 Sch 2 para 12(3).

14 Ibid Sch 2 para 12(4). In such a case, for references in Sch 2 para 12(2) (see the text to notes 6-11 *supra*) to the purchaser there are substituted references to the subsequent transferor: Sch 2 para 12(4).

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G. RECORDINGS AND BROADCASTS

691. Use of recordings of spoken works in certain cases.

Where a recording¹ of the reading or recitation of a literary work² is made for the purpose of reporting current events³ or of communicating to the public⁴ the whole or part of the reading or recitation⁵, it is not an infringement⁶ of any of the rights conferred by the provisions⁷ relating to economic rights in performances⁸ to use the recording, or to copy⁹ the recording and use the copy, for that purpose, provided the following conditions are met¹⁰. The conditions are that:

- 398 (1) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast¹¹;
- 399 (2) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation¹²;
- 400 (3) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made¹³; and
- 401 (4) the use is by or with the authority of a person who is lawfully in possession of the recording¹⁴.

1 For the meaning of 'recording' see PARA 608 ante.

2 For the meaning of 'literary work' see PARA 67 ante.

3 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 13(1)(a).

4 For the meaning of 'communication to the public' see PARA 326 ante.

5 Copyright, Designs and Patents Act 1988 Sch 2 para 13(1)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 12(b)).

6 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

7 In the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

8 For the meaning of 'performance' see PARA 607 ante.

9 For the meaning of 'copy' see PARA 314 ante.

10 Copyright, Designs and Patents Act 1988 Sch 2 para 13(1) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 13 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 13 (as amended) have the same meaning as in s 58 (as amended) (see PARA 385 ante): Sch 2 para 13(3).

11 Ibid Sch 2 para 13(2)(a) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2).

12 Copyright, Designs and Patents Act 1988 Sch 2 para 13(2)(b).

13 Ibid Sch 2 para 13(2)(c).

14 Ibid Sch 2 para 13(2)(d).

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692. Recordings of folksongs.

A recording¹ of a performance² of a song may be made for the purpose of including it in an archive maintained by a designated body³ without infringing⁴ any of the rights conferred by the provisions⁵ relating to economic rights in performances, provided that the following conditions are met⁶. The conditions are that:

- 402 (1) the words are unpublished⁷ and of unknown authorship⁸ at the time the recording is made⁹;
- 403 (2) the making of the recording does not infringe any copyright¹⁰; and
- 404 (3) its making is not prohibited by any performer¹¹.

Copies¹² of a recording made in reliance on these provisions¹³ and included in an archive maintained by a designated body may, if the prescribed conditions¹⁴ are met, be made and supplied by the archivist without infringing any of the economic rights in performances¹⁵.

1 For the meaning of 'recording' see PARA 608 ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 'Designated body' means a body designated for the purposes of the Copyright, Designs and Patents Act 1988 s 61 (as amended) (see PARA 388 ante): s 189, Sch 2 para 14(4).

4 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

5 In the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

6 Ibid Sch 2 para 14(1) (Sch 2 para 14(1), (3) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 14 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 14 (as amended) have the same meaning as in s 61 (as amended) (see PARA 388 ante): Sch 2 para 14(4).

7 For the meaning of 'unpublished' see PARA 63 ante.

8 For the meaning of 'unknown authorship' see PARA 114 ante.

9 Copyright, Designs and Patents Act 1988 Sch 2 para 14(2)(a).

10 Ibid Sch 2 para 14(2)(b). For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

11 Ibid Sch 2 para 14(2)(c).

12 For the meaning of 'copies' see PARA 314 ante.

13 In reliance on the Copyright, Designs and Patents Act 1988 Sch 2 para 14(1) (as amended): see the text to notes 1-6 supra.

14 'The prescribed conditions' means the conditions prescribed for the purposes of ibid s 61(3) (see PARA 388 ante): Sch 2 para 14(4).

15 Ibid Sch 2 para 14(3) (as amended: see note 6 supra).

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693. Lending of certain recordings.

The Secretary of State¹ may by order provide that in such cases as may be specified in the order the lending² to the public of copies³ of films⁴ or sound recordings⁵ is to be treated as licensed by the performer subject only to the payment of such reasonable royalty or other payment as may be agreed or determined, in default of agreement, by the Copyright Tribunal⁶. No such order applies if, or to the extent that, there is a licensing scheme certified⁷ for these purposes providing for the grant of licences⁸.

An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender, or the circumstances of the lending⁹. An order must be made by statutory instrument; and no order may be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament¹⁰.

Nothing in these provisions affects any liability for secondary infringement¹¹ by possessing or dealing with an illicit recording¹² in respect of the lending of illicit recordings¹³.

1 As to the Secretary of State see PARA 183 note 2 ante.

2 For the meaning of 'lending' see PARA 613 ante.

3 For the meaning of 'copies' see PARA 314 ante.

4 For the meaning of 'film' see PARA 86 ante.

5 For the meaning of 'sound recording' see PARA 84 ante.

6 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 14A(1) (Sch 2 para 14A added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 20(3)). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 14A (as added) see PARA 676 ante. Expressions used in Sch 2 para 14A (as added) have the same meaning as in s 66 (as substituted) (see PARA 393 ante): Sch 2 para 14A(6) (as so added). At the date at which this volume states the law no order had been made under Sch 2 para 14A(1) (as added). As to the Copyright Tribunal see PARA 207 ante.

7 Ie a licensing scheme certified under *ibid* s 205A, Sch 2A para 16 (s 205A as added; Sch 2A para 16 as added and amended): see PARA 646 ante.

8 *Ibid* Sch 2 para 14A(2) (as added: see note 6 *supra*).

9 *Ibid* Sch 2 para 14A(3) (as added: see note 6 *supra*).

10 *Ibid* Sch 2 para 14A(4) (as added: see note 6 *supra*).

11 Ie under *ibid* s 184(1)(b): see PARA 617 ante.

12 For the meaning of 'illicit recording' see PARAS 618, 625 ante.

13 Copyright, Designs and Patents Act 1988 Sch 2 para 14A(5) (as added: see note 6 *supra*).

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694. Playing of sound recordings for purposes of club, society etc.

It is not an infringement¹ of any of the rights conferred by the provisions² relating to economic rights in performances to play a sound recording³ as part of the activities of, or for the benefit of, a club, society or other organisation if the following conditions are met⁴. The conditions are:

- 405 (1) that the organisation is not established or conducted for profit and its main objects are charitable⁵ or are otherwise concerned with the advancement of religion, education or social welfare⁶;
- 406 (2) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain⁷;
- 407 (3) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation⁸; and
- 408 (4) that the proceeds from any goods or services sold by, or on behalf of, the organisation in the place where the sound recording is heard⁹, and on the occasion when the sound recording is played¹⁰, are applied solely for the purposes of the organisation¹¹.

1 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

2 I.e. the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

3 For the meaning of 'sound recording' see PARA 84 ante.

4 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 15(1) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 15 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 15 (as amended) have the same meaning as in s 67 (as amended) (see PARA 395 ante): Sch 2 para 15(3). A local authority is not an organisation for these purposes: see *Phonographic Performance Ltd v South Tyneside Metropolitan Borough Council* [2001] LGR 176, [2001] RPC 594 (copyright).

5 As to the meaning of 'charitable' see CHARITIES vol 8 (2010) PARA 1 et seq.

6 Copyright, Designs and Patents Act 1988 Sch 2 para 15(2)(a).

7 Ibid Sch 2 para 15(2)(b) (Sch 2 para 15(2)(b) substituted, and Sch 2 para 15(c), (d) added, by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 18(2)).

8 Copyright, Designs and Patents Act 1988 Sch 2 para 15(2)(c) (as added: see note 7 supra).

9 Ibid Sch 2 para 15(2)(d)(i) (as added: see note 7 supra).

10 Ibid Sch 2 para 15(2)(d)(ii) (as added: see note 7 supra).

11 Ibid Sch 2 para 15(2)(d) (as added: see note 7 supra).

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695. Incidental recording for purposes of broadcast.

A person who proposes to broadcast¹ a recording² of a performance³ in circumstances not infringing⁴ any of the rights conferred by the provisions⁵ relating to economic rights in performances is to be treated as having consent⁶ for the making of a further recording for the purposes of the broadcast⁷. That consent is subject to the condition that: (1) the further recording must not be used for any other purpose⁸; and (2) must be destroyed within 28 days of being first used for broadcasting the performance⁹.

A recording made in accordance with these provisions is to be treated as an illicit recording¹⁰ for the purposes of any use in breach of the condition mentioned in head (1) above¹¹, and for all purposes after that condition or the condition mentioned in head (2) above is broken¹².

1 For the meaning of 'broadcast' see PARA 89 ante.

2 For the meaning of 'recording' see PARA 608 ante.

3 For the meaning of 'performance' see PARA 607 ante.

4 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

5 I.e. the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended); see PARA 610 et seq ante.

6 I.e. for the purposes of ibid Pt II Ch 2 (as amended).

7 Ibid s 189, Sch 2 para 16(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2; and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9, 10). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 16 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 16 (as amended) have the same meaning as in s 68 (as amended) (see PARA 396 ante): Sch 2 para 16(4).

8 Ibid Sch 2 para 16(2)(a).

9 Ibid Sch 2 para 16(2)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2).

10 For the meaning of 'illicit recording' see PARAS 618, 625 ante.

11 Copyright, Designs and Patents Act 1988 Sch 2 para 16(3)(a).

12 Ibid Sch 2 para 16(3)(b).

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696. Recordings for purposes of supervision and control of broadcasts and other services.

The rights conferred by the provisions¹ relating to economic rights in performances² are not infringed³ by the making or use by the British Broadcasting Corporation⁴, for the purpose of maintaining supervision and control over programmes broadcast⁵ by it, of recordings⁶ of those programmes⁷.

Those rights are not infringed by anything done⁸ in pursuance of:

- 409 (1) specified provisions of the Broadcasting Act 1990⁹, the Broadcasting Act 1996¹⁰ or the Communications Act 2003¹¹;
- 410 (2) a condition which¹² is included in a licence granted under Part I or Part III of the Communications Act 2003 or Part I or Part II of the Broadcasting Act 1996¹³;
- 411 (3) a direction given¹⁴ under the power of OFCOM¹⁵ to require production of recordings etc¹⁶;
- 412 (4) the power¹⁷ of OFCOM to make and use recordings of programmes or any part of them for the purpose of its supervisory powers¹⁸.

Nor are those rights infringed by the use by OFCOM in connection with the performance of any of its functions¹⁹ under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003²⁰ of:

- 413 (a) any recording, script or transcript which is provided to it under or by virtue of any provision of those Acts²¹; or
- 414 (b) any existing material²² which is transferred to it by a scheme made²³ under the Communications Act 2003²⁴.

1 Ie the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

4 As to the British Broadcasting Corporation see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 306 et seq.

5 For the meaning of 'broadcast' see PARA 89 ante.

6 For the meaning of 'recording' see PARA 608 ante.

7 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 17(1) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 17 (as amended) see PARA 676 ante.

8 Ibid Sch 2 para 17(2) (Sch 2 para 17(2) substituted by the Broadcasting Act 1996 s 148(1), Sch 10 para 32; and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9).

9 Ie the Broadcasting Act 1990 s 167(1) (power to make copies of recordings): see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 595.

10 le the Broadcasting Act 1996 s 115(4) or (6) (fairness complaints) or s 117 (duty to retain recordings): see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARAS 515-516.

11 Copyright, Designs and Patents Act 1988 Sch 2 para 17(2)(a) (Sch 2 para 17(2) as substituted (see note 8 supra); and Sch 2 para 17(2)(a) further substituted by the Communications Act 2003 s 406(1), Sch 17 para 93(1), (2)(a)). The specified provision of the Communications Act 2003 is Sch 12 para 20 (monitoring of programmes by the Welsh Authority).

12 le by virtue of the Communications Act 2003 s 334(1): see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 292.

13 Copyright, Designs and Patents Act 1988 Sch 2 para 17(2)(b) (as substituted (see note 8 supra); and amended by the Communications Act 2003 Sch 17 para 93(1), (2)(b), Sch 19(1)). As to the Communications Act 2003 Pt I (ss 1-31) and Pt III (ss 198-368) and as to the Broadcasting Act 1996 Pt I (ss 1-39) (as amended) and Pt II (ss 40-72) (as amended) see TELECOMMUNICATIONS AND BROADCASTING.

14 le under the Broadcasting Act 1990 s 109(2): see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 471.

15 As to OFCOM see TELECOMMUNICATIONS vol 97 (2010) PARA 2 et seq.

16 Copyright, Designs and Patents Act 1988 Sch 2 para 17(2)(c) (as substituted (see note 8 supra); and amended by the Communications Act 2003 Sch 17 para 93(1), (2)(c)).

17 le under the Communications Act 2003 s 334(3): see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 292.

18 Copyright, Designs and Patents Act 1988 Sch 2 para 17(2)(d) (Sch 2 para 17(2) as substituted (see note 8 supra); and Sch 2 para 17(2)(d) added by the Communications Act 2003 Sch 17 para 93(1), (2)(d)).

19 As to such functions see TELECOMMUNICATIONS vol 97 (2010) PARA 14 et seq.

20 Copyright, Designs and Patents Act 1988 Sch 2 para 17(3) (Sch 2 para 17(3) substituted by the Communications Act 2003 Sch 17 para 93(1), (3); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9).

21 Copyright, Designs and Patents Act 1988 Sch 2 para 17(3)(a) (as substituted: see note 20 supra).

22 'Existing material' means: (1) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996; and (2) any recording or transcript which was provided to the Broadcasting Standards Commission under the Broadcasting Act 1996 s 115(4) or (6) or s 116(5) (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 497); Copyright, Designs and Patents Act 1988 Sch 2 para 17(4) (added by the Communications Act 2003 Sch 17 para 93(1), (3)). As to the transfer to OFCOM of the functions of the Independent Television Commission, the Radio Authority and the Broadcasting Standards Commission see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARAS 328, 439, 510.

23 le under the Communications Act 2003 s 30: see TELECOMMUNICATIONS vol 97 (2010) PARA 38 et seq.

24 Copyright, Designs and Patents Act 1988 Sch 2 para 17(3)(b) (as substituted: see note 20 supra).

UPDATE

696 Recordings for purposes of supervision and control of broadcasts and other services

TEXT AND NOTES--The rights conferred by the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) are not infringed by the use by the appropriate regulatory authority designated under the Communications Act 2003 s 368B in connection with the performance of any of its functions under the 2003 Act, of any recording, script or transcript which is provided to it under or by virtue of any provision of the 2003 Act: Copyright, Designs and Patents Act 1988 Sch 2 para 17(5) (added by SI 2009/2979).

NOTES 7, 18--Copyright, Designs and Patents Act 1988 Sch 2 para 17(1), (2)(d) amended, Sch 2 para 17(6) added: SI 2009/2979.

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697. Recording for the purposes of time-shifting.

The making in domestic premises for private and domestic use of a recording¹ of a broadcast² solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe³ any right conferred by the provisions⁴ relating to economic rights in performances⁵ in relation to a performance or recording included in the broadcast⁶.

Where a recording which would otherwise be an illicit recording⁷ is made in accordance with these provisions but is subsequently dealt with⁸, it must be treated as an illicit recording for the purposes of that dealing⁹; and if that dealing infringes any economic right in performances, it must be treated as an illicit recording for all subsequent purposes¹⁰.

1 For the meaning of 'recording' see PARA 608 ante.

2 For the meaning of 'broadcast' see PARA 89 ante.

3 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

4 I.e. the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended); see PARA 610 et seq ante.

5 For the meaning of 'performance' see PARA 607 ante.

6 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 17A(1) (Sch 2 para 17A added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 19(3); and the Copyright, Designs and Patents Act 1988 Sch 2 para 17A(1) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 17A (as added and amended) see PARA 676 ante. Expressions used in Sch 2 para 17A (as added and amended) have the same meaning as in s 70 (as amended) (see PARA 398 ante): Sch 2 para 17A(4) (as so added).

7 For the meaning of 'illicit recording' see PARAS 618, 625 ante.

8 'Dealt with' means sold or let for hire, offered or exposed for sale or hire, or communicated to the public: Copyright, Designs and Patents Act 1988 Sch 2 para 17A(3) (as added: see note 6 supra). As to the meaning of 'sell' see PARA 330 note 6 ante; as to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante; and for the meaning of 'communication to the public' see PARA 326 ante.

9 Ibid Sch 2 para 17A(2)(a) (as added: see note 6 supra).

10 Ibid Sch 2 para 17A(2)(b) (as added (see note 6 supra); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9).

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698. Photographs of broadcasts.

The making in domestic premises for private and domestic use of a photograph¹ of the whole or any part of an image forming part of a broadcast², or a copy³ of such a photograph, does not infringe⁴ any right conferred by the provisions⁵ relating to economic rights in performances⁶ in relation to a performance or recording⁷ included in the broadcast⁸.

Where a recording which would otherwise be an illicit recording⁹ is made in accordance with these provisions but is subsequently dealt with¹⁰, it must be treated as an illicit recording for the purposes of that dealing¹¹; and if that dealing infringes any economic right in performances, it must be treated as an illicit recording for all subsequent purposes¹².

1 For the meaning of 'photograph' see PARA 77 ante.

2 For the meaning of 'broadcast' see PARA 89 ante.

3 For the meaning of 'copy' see PARA 314 ante.

4 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

5 In the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

6 For the meaning of 'performance' see PARA 607 ante.

7 For the meaning of 'recording' see PARA 608 ante.

8 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 17B(1) (Sch 2 para 17B added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 20(2); and the Copyright, Designs and Patents Act 1988 Sch 2 para 17B(1) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 17B (as added and amended) see PARA 676 ante. Expressions used in Sch 2 para 17B (as added and amended) have the same meaning as in s 71 (as substituted) (see PARA 399 ante): Sch 2 para 17B(4) (as so added).

9 For the meaning of 'illicit recording' see PARAS 618, 625 ante.

10 'Dealt with' means sold or let for hire, offered or exposed for sale or hire, or communicated to the public: Copyright, Designs and Patents Act 1988 Sch 2 para 17B(3) (as added: see note 8 supra). As to the meaning of 'sell' see PARA 330 note 6 ante; as to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante; and for the meaning of 'communication to the public' see PARA 326 ante.

11 Ibid Sch 2 para 17B(2)(a) (as added: see note 8 supra).

12 Ibid Sch 2 para 17B(2)(b) (as added (see note 8 supra); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9).

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699. Free public showing or playing of broadcast.

The showing or playing in public of a broadcast¹ to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe² any of the rights conferred by the provisions³ relating to economic rights in performances⁴ in relation to a performance or recording⁵ included in the broadcast, or any sound recording⁶, except so far as it is an excepted sound recording⁷ or film⁸ which is played or shown in public by reception of the broadcast⁹.

The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any economic right in performances in relation to a performance or recording included in any excepted sound recording which is played in public by reception of the broadcast, if the playing or showing of that broadcast in public:

- 415 (1) forms part of the activities of an organisation that is not established or conducted for profit¹⁰; or
- 416 (2) is necessary for the purposes of repairing equipment for the reception of broadcasts¹¹, demonstrating that a repair to such equipment has been carried out¹², or demonstrating such equipment which is being sold¹³ or let for hire or offered or exposed for sale¹⁴ or hire¹⁵.

The audience is to be treated as having paid for admission to a place: (a) if they have paid for admission to a place of which that place forms part¹⁶; or (b) if goods or services are supplied at that place, or a place of which it forms part, at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast, or at prices exceeding those usually charged there and which are partly attributable to those facilities¹⁷. The following are not to be regarded as having paid for admission to a place: (i) persons admitted as residents or inmates of the place¹⁸; (ii) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts is only incidental to the main purposes of the club or society¹⁹.

Where the making of the broadcast was an infringement of the economic rights in performances in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast must be taken into account in assessing the damages for that infringement²⁰.

1 For the meaning of 'broadcast' see PARA 89 ante.

2 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

3 I.e the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

4 For the meaning of 'performance' see PARA 607 ante.

5 For the meaning of 'recording' see PARA 608 ante.

6 For the meaning of 'sound recording' see PARA 84 ante.

7 For the meaning of 'excepted sound recording' see PARA 400 note 4 ante.

8 For the meaning of 'film' see PARA 86 ante.

9 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 18(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 2(2), 3, 21(2)(a), Sch 2; and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 18 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 18 (as amended) have the same meaning as in s 72 (as amended) (see PARA 400 ante): Sch 2 para 18(5).

10 Ibid Sch 2 para 18(1A)(a) (Sch 2 para 18(1A) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 21(2)(b); and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9).

11 Copyright, Designs and Patents Act 1988 Sch 2 para 18(1A)(b)(i) (as added and amended: see note 10 supra).

12 Ibid Sch 2 para 18(1A)(b)(ii) (as added and amended: see note 10 supra).

13 As to the meaning of 'sell' see PARA 330 note 6 ante.

14 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante.

15 Copyright, Designs and Patents Act 1988 Sch 2 para 18(1A)(b)(iii) (as added and amended: see note 10 supra).

16 Ibid Sch 2 para 18(2)(a).

17 Ibid Sch 2 para 18(2)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2).

18 Copyright, Designs and Patents Act 1988 Sch 2 para 18(3)(a).

19 Ibid Sch 2 para 18(3)(b) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2).

20 Copyright, Designs and Patents Act 1988 Sch 2 para 18(4) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Sch 2; and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9). As to damages see PARA 704 post.

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700. Reception and retransmission of wireless broadcast by cable.

The following provisions apply where a wireless broadcast¹ made from a place in the United Kingdom² is received and immediately retransmitted by cable³.

The rights conferred by the provisions⁴ relating to economic rights in performances⁵ in relation to a performance or recording⁶ included in the broadcast are not infringed⁷ if and to the extent that the broadcast is made for reception in the area in which it is retransmitted by cable; but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was retransmitted by cable must be taken into account in assessing the damages for that infringement⁸.

Where:

- 417 (1) the retransmission by cable is in pursuance of a relevant requirement⁹; but
- 418 (2) to any extent, the area in which the retransmission by cable takes place ('the cable area') falls outside the area for reception in which the broadcast is made ('the broadcast area')¹⁰,

the retransmission by cable, to the extent that it is provided for so much of the cable area as falls outside the broadcast area, of any performance or recording included in the broadcast must be treated as licensed by the owner of the economic rights in performances in relation to the performance or recording, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the retransmission by cable of the broadcast as may be agreed or determined in default of agreement by the Copyright Tribunal¹¹. However, these provisions do not apply if, or to the extent that, the retransmission of the performance or recording by cable is, apart from these provisions, licensed by the owner of the economic rights in performances in relation to the performance or recording¹².

1 For the meaning of 'wireless broadcast' see PARA 88 note 8 ante.

2 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

3 Copyright, Designs and Patents Act 1988 s 189, Sch 2 para 19(1) (Sch 2 para 19 substituted by the Broadcasting Act 1996 s 138, Sch 9 para 5; and the Copyright, Designs and Patents Act 1988 Sch 2 para 19(1) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(3)(b)(i), (ii)). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 19 (as substituted and amended) see PARA 676 ante. Expressions used in Sch 2 para 19 (as substituted and amended) have the same meaning as in s 73 (as substituted and amended) (see PARA 401 ante): Sch 2 para 19(9) (as so substituted).

4 *Ibid* Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

5 For the meaning of 'performance' see PARA 607 ante.

6 For the meaning of 'recording' see PARA 608 ante.

7 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

8 Copyright, Designs and Patents Act 1988 Sch 2 para 19(2) (as substituted (see note 3 supra); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 2, 22(3)(c)(i), (ii); and the

Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to damages see PARA 704 post. The Secretary of State may by order: (1) provide that in specified cases the Copyright, Designs and Patents Act 1988 Sch 2 para 19(2) (as substituted and amended) is to apply in relation to broadcasts of a specified description which are not made as mentioned in Sch 2 para 19(2) (as substituted and amended); or (2) exclude the application of Sch 2 para 19(2) (as substituted and amended) in relation to broadcasts of a specified description made as therein mentioned: Sch 2 para 19(5) (as so substituted). Where the Secretary of State exercises the power conferred by Sch 2 para 19(5)(b) (as substituted) (see head (2) *supra*) in relation to broadcasts of any description, the order may also provide for Sch 2 para 19(3) (as substituted and amended) (see the text to notes 9-11 *infra*) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description: Sch 2 para 19(6) (as so substituted). Any such order may contain such transitional provision as appears to the Secretary of State to be appropriate (Sch 2 para 19(7) (as so substituted)); and must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament (Sch 2 para 19(8) (as so substituted)). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 183 note 2 *ante*.

9 Ibid Sch 2 para 19(3)(a) (as substituted (see note 3 *supra*); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(3)(d)(i)). For the meaning of 'relevant requirement' see PARA 401 note 5 *ante*.

10 Copyright, Designs and Patents Act 1988 Sch 2 para 19(3)(b) (as substituted (see note 3 *supra*); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(3)(d)(ii)).

11 Copyright, Designs and Patents Act 1988 Sch 2 para 19(3) (as substituted (see note 3 *supra*); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(3)(d)(iii), (iv); and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9). As to the Copyright Tribunal see PARA 207 *ante*; and as to applications to the Tribunal in this respect see PARA 674 *ante*.

12 Copyright, Designs and Patents Act 1988 Sch 2 para 19(4) (as substituted (see note 3 *supra*); and amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 22(3)(e); and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 9).

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701. Provision of sub-titled copies of broadcast.

A designated body¹ may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies² which are sub-titled or otherwise modified for their special needs, make recordings³ of broadcasts⁴ and copies of such recordings, and issue⁵ or lend⁶ copies to the public, without infringing⁷ any of the rights conferred by the provisions⁸ relating to economic rights in performances⁹ in relation to a performance or recording included in the broadcast¹⁰.

These provisions do not apply if, or to the extent that, there is a licensing scheme certified¹¹ for these purposes providing for the grant of licences¹².

1 'Designated body' means a body designated for the purposes of the Copyright, Designs and Patents Act 1988 s 74 (as amended) (see PARA 402 ante): s 189, Sch 2 para 20(2).

2 For the meaning of 'copies' see PARA 314 ante.

3 For the meaning of 'recording' see PARA 608 ante.

4 For the meaning of 'broadcast' see PARA 89 ante.

5 For the meaning of 'issue copies to the public' see PARA 322 ante.

6 For the meaning of 'lend' see PARA 323 ante.

7 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

8 Ie the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

9 For the meaning of 'performance' see PARA 607 ante.

10 Copyright, Designs and Patents Act 1988 Sch 2 para 20(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 2(2), 3, 23(2)(a), Sch 2; and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 20 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 20 (as amended) have the same meaning as in s 74 (as amended) (see PARA 402 ante): Sch 2 para 20(2).

11 Ie under ibid s 205A (as added), Sch 2A para 16 (as added and amended): see PARA 646 ante.

12 Ibid Sch 2 para 20(1A) (added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 23(2)(b)).

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702. Recording of broadcast for archival purposes.

A recording¹ of a broadcast² of a designated class³, or a copy⁴ of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body⁵ without thereby infringing⁶ any of the rights conferred by the provisions⁷ relating to economic rights in performances⁸ in relation to a performance or recording included in the broadcast⁹.

1 For the meaning of 'recording' see PARA 608 ante.

2 For the meaning of 'broadcast' see PARA 89 ante.

3 'Designated class' means a class designated for the purposes of the Copyright, Designs and Patents Act 1988 s 75 (as amended) (see PARA 403 ante): s 189, Sch 2 para 21(2).

4 For the meaning of 'copy' see PARA 314 ante.

5 'Designated body' means a body designated for the purposes of the Copyright, Designs and Patents Act 1988 s 75 (as amended) (see PARA 403 ante): Sch 2 para 21(2).

6 As to infringement see PARAS 616-617, 623-624 ante, 703 et seq post.

7 I.e the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

8 For the meaning of 'performance' see PARA 607 ante.

9 Copyright, Designs and Patents Act 1988 Sch 2 para 21(1) (amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(2), Sch 2; and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 9). As to the application of the Copyright, Designs and Patents Act 1988 Sch 2 para 21 (as amended) see PARA 676 ante. Expressions used in Sch 2 para 21 (as amended) have the same meaning as in s 75 (as amended) (see PARA 403 ante): Sch 2 para 21(2).

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(ix) Remedies for Infringement

A. PERFORMER'S PROPERTY RIGHTS

703. Infringement actionable by rights owner.

An infringement of a performer's property rights¹ is actionable² by the rights owner³.

In a claim for infringement of a performer's property rights all such relief by way of damages, injunctions, accounts or otherwise is available to the claimant as is available in respect of the infringement of any other property right⁴. In addition to these usual remedies, there is also provision for statutory delivery up⁵, a right to seize illicit recordings under certain conditions⁶, and the disposal of illicit recordings delivered up or seized⁷.

1 For the meaning of 'performer's property rights' see PARA 633 ante.

2 The subject to the provisions of the Copyright, Designs and Patents Act 1988 ss 191J-205B (as added and amended) (see PARA 704 et seq post): s 191I(3) (s 191I added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1); and the Copyright, Designs and Patents Act 1988 s 191I(3) amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). See also PARAS 610-611, 622-624 ante.

3 Copyright, Designs and Patents Act 1988 s 191I(1) (as added: see note 2 supra). As to the rights owner see PARA 633 ante.

4 Ibid s 191I(2) (as added: see note 2 supra). As to the period of limitation see PARA 411 ante; as to injunctions see PARAS 412-416 ante, 705 post; and as to damages and accounts see PARAS 419 ante, 704 post. In proceedings brought by virtue of Pt II (ss 180-212) (as amended) with respect to the rights in a performance, where copies of a recording of the performance as issued to the public bear a statement that a named person was the performer, the statement is admissible as evidence of the fact stated and must be presumed to be correct until the contrary is proved: s 197A(1) (added by the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 2(2), Sch 2 para 10). For the meaning of 'recording' see PARA 608 ante; and for the meaning of 'performance' see PARA 607 ante.

5 See PARA 711 post.

6 See PARA 712 post.

7 See PARA 713 post.

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704. Provisions as to damages in infringement claim.

Where in a claim for infringement of a performer's property rights¹ it is shown that at the time of the infringement the defendant did not know, and had no reason to believe², that the rights subsisted in the recording³ to which the claim relates, the claimant is not entitled to damages against him, but this is without prejudice to any other remedy⁴.

The court may in a claim for infringement of a performer's property rights, having regard to all the circumstances and, in particular, to the flagrancy of the infringement and any benefit accruing to the defendant by reason of the infringement, award such additional damages as the justice of the case may require⁵.

¹ For the meaning of 'performer's property rights' see PARA 633 ante. As to claims for infringement see PARA 703 ante.

² As to the meaning of 'know or have reason to believe' see PARA 334 ante.

³ For the meaning of 'recording' see PARA 608 ante.

⁴ Copyright, Designs and Patents Act 1988 s 191J(1) (s 191J added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1)). As to other provisions imposing limitations as to damages see PARAS 610, 617, 622, 624, 699, 700 ante, 706 post.

⁵ Copyright, Designs and Patents Act 1988 s 191J(2) (as added: see note 4 supra). As to the similar provision in relation to copyright see PARA 419 ante.

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705. Injunctions against service providers.

The High Court¹ has power to grant an injunction against a service provider², where that service provider has actual knowledge of another person using its service to infringe a performer's property right³. In determining whether a service provider has actual knowledge for these purposes, a court must take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, must have regard to:

- 419 (1) whether a service provider has received a notice through a means of contact made available⁴ to a recipient of his service⁵; and
- 420 (2) the extent to which any notice includes: (a) the full name and address of the sender of the notice⁶; (b) details of the infringement in question⁷.

1 As to the High Court see COURTS vol 10 (Reissue) PARA 602 et seq.

2 For the meaning of 'service provider' see PARA 417 note 2 ante; definition applied by the Copyright, Designs and Patents Act 1988 s 191JA(3) (s 191JA added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 27(2)).

3 Copyright, Designs and Patents Act 1988 s 191JA(1) (as added: see note 2 supra). For the meaning of 'performer's property rights' see PARA 633 ante.

4 ie in accordance with the Electronic Commerce (EC Directive) Regulations 2002, SI 2002/2013, reg 6(1)(c).

5 Copyright, Designs and Patents Act 1988 s 191JA(2)(a) (as added: see note 2 supra).

6 Ibid s 191JA(2)(b)(i) (as added: see note 2 supra).

7 Ibid s 191JA(2)(b)(ii) (as added: see note 2 supra).

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706. Undertaking to take licence of right in infringement proceedings.

If, in proceedings for infringement of a performer's property rights¹ in respect of which a licence is available as of right², the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Copyright Tribunal³:

- 421 (1) no injunction may be granted against him⁴;
- 422 (2) no order for delivery up⁵ may be made against him⁶; and
- 423 (3) the amount recoverable against him by way of damages or on an account of profits must not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement⁷.

An undertaking may be given at any time before final order in the proceedings, without any admission of liability⁸.

Nothing in these provisions affects the remedies available in respect of an infringement committed before licences of right were available⁹.

¹ For the meaning of 'performer's property rights' see PARA 633 ante. As to claims for infringement see PARA 703 ante.

² I.e. under the Copyright, Designs and Patents Act 1988 s 205A, Sch 2A para 17 (s 205A as added; Sch 2A para 17 as added and amended) (powers exercisable in consequence of competition report): see PARA 647 ante.

³ As to the Copyright Tribunal see PARA 207 ante.

⁴ Copyright, Designs and Patents Act 1988 s 191K(1)(a) (s 191K added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1)).

⁵ I.e. under the Copyright, Designs and Patents Act 1988 s 195 (as amended): see PARA 711 post.

⁶ Ibid s 191K(1)(b) (as added: see note 4 supra).

⁷ Ibid s 191K(1)(c) (as added: see note 4 supra).

⁸ Ibid s 191K(2) (as added: see note 4 supra).

⁹ Ibid s 191K(3) (as added: see note 4 supra).

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707. Rights and remedies for exclusive licensee.

An exclusive licensee¹ has, except against the owner of a performer's property rights², the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment³. His rights and remedies are concurrent with those of the rights owner⁴.

In a claim brought by an exclusive licensee by virtue of these provisions a defendant may avail himself of any defence which would have been available to him if the claim had been brought by the rights owner⁵.

1 'Exclusive licensee' is not defined, but for the meaning of 'exclusive licence' see PARA 645 ante.

2 For the meaning of 'performer's property rights', and as to ownership thereof, see PARA 633 ante.

3 Copyright, Designs and Patents Act 1988 s 191L(1) (s 191L added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1)). As to assignments see PARA 637 ante; and as to licences see PARA 644 ante.

4 Copyright, Designs and Patents Act 1988 s 191L(2) (as added: see note 3 supra). References in the relevant provisions of Pt II Ch 2 (ss 182-205B) (as amended) are to be construed accordingly: s 191L(2) (as so added; and amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). As to the rights of the rights owner see PARA 703 ante; and as to the exercise of concurrent rights see PARA 708 post.

5 Copyright, Designs and Patents Act 1988 s 191L(3) (as added: see note 3 supra). As to the exceptions to infringement see PARA 676 et seq ante; and as to innocent infringement see PARA 704 ante.

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708. Exercise of concurrent rights.

Where a claim for infringement of a performer's property rights¹ brought by the rights owner² or an exclusive licensee³ relates, wholly or partly, to an infringement in respect of which they have concurrent rights of action, the rights owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the claim unless the other is either joined as claimant or added as a defendant⁴. A rights owner or exclusive licensee who is so added as a defendant is not liable for any costs in the claim unless he takes part in the proceedings⁵. These provisions do not affect the granting of interim relief on an application by the rights owner or exclusive licensee alone⁶.

Where a claim for infringement of a performer's property rights is brought which relates, wholly or partly, to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action:

- 424 (1) the court must, in assessing damages, take into account the terms of the licence⁷ and any pecuniary remedy already awarded or available to either of them in respect of the infringement⁸;
- 425 (2) no account of profits may be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement⁹; and
- 426 (3) the court must, if an account of profits is directed, apportion the profits between them as the court considers just, subject to any agreement between them¹⁰,

and these provisions apply whether or not the rights owner and the exclusive licensee are both parties to the proceedings¹¹.

The owner of a performer's property rights must notify an exclusive licensee having concurrent rights before applying for an order for delivery up¹² or exercising the right of seizure¹³; and the court may on the application of the licensee make such order for delivery up or, as the case may be, prohibiting or permitting the exercise by the rights owner of the right of seizure, as it thinks fit having regard to the terms of the licence¹⁴.

1 For the meaning of 'performer's property rights' see PARA 633 ante.

2 As to the owner of the rights see PARA 633 ante; and as to claims by the rights owner in respect of infringement see PARA 703 ante.

3 'Exclusive licensee' is not defined, but for the meaning of 'exclusive licence' see PARA 645 ante. As to the rights of an exclusive licensee in respect of infringement see PARA 707 ante.

4 Copyright, Designs and Patents Act 1988 s 191M(1) (s 191M added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(1)).

5 Copyright, Designs and Patents Act 1988 s 191M(2) (as added: see note 4 supra).

6 Ibid s 191M(3) (as added: see note 4 supra).

7 Ibid s 191M(4)(a)(i) (as added: see note 4 supra). As to damages see PARAS 704, 419 ante.

- 8 Ibid s 191M(4)(a)(ii) (as added: see note 4 supra).
- 9 Ibid s 191M(4)(b) (as added: see note 4 supra). As to accounts of profits see PARAS 704, 419 ante.
- 10 Ibid s 191M(4)(c) (as added: see note 4 supra).
- 11 Ibid s 191M(4) (as added: see note 4 supra).
- 12 Ie under ibid s 195 (as amended) : see PARA 711 post.
- 13 Ie under ibid s 196: see PARA 712 post.
- 14 Ibid s 191M(5) (as added: see note 4 supra).

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B. PERFORMER'S NON-PROPERTY RIGHTS AND RIGHTS OF PERSONS HAVING RECORDING RIGHTS

709. Infringement actionable as breach of statutory duty.

An infringement of a performer's non-property rights¹ or any rights conferred² on a person having recording rights³ is actionable by the person entitled to the right⁴ as a breach of statutory duty⁵.

1 For the meaning of 'performer's non-property rights' see PARA 634 ante.

2 le by the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

3 For the meaning of 'person having recording rights' see PARA 620 ante.

4 As to who is entitled to the right see PARAS 620, 634, 648-649 ante.

5 Copyright, Designs and Patents Act 1988 s 194 (amended by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(4)(a), (b); and the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). As to breach of statutory duty see TORT vol 97 (2010) PARA 495 et seq.

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710. Remedies for breach of statutory duty.

The usual remedies of damages¹ and an injunction² to restrain future infringements are available together with the normal interim relief, such as search orders and freezing orders³ and interim injunctions⁴. Any damages recovered by the personal representatives⁵ of a deceased performer in respect of an infringement after his death devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death⁶.

In addition to these usual remedies, there is provision for statutory delivery up⁷, the right to seize illicit recordings under certain conditions⁸, and the disposal of illicit recordings delivered up or seized⁹.

1 As to when the right to damages is excluded or restricted see PARAS 610, 617, 622, 624, 699-700 ante.

2 As to injunctions see PARA 412 et seq ante.

3 As to freezing orders see CIVIL PROCEDURE vol 11 (2009) PARA 396 et seq.

4 As to interim injunctions see PARA 414 ante.

5 I.e. by virtue of the Copyright, Designs and Patents Act 1988 s 192A (as added): see PARA 648 ante.

6 Ibid s 192A(5) (added by the Copyright and Related Rights Regulations 1996, SI 1996/2967, regs 4, 21(2)).

7 See PARA 711 post.

8 See PARA 712 post.

9 See PARA 713 post.

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C. DELIVERY UP; SEIZURE; DISPOSAL OF ILLICIT RECORDINGS

711. Order for delivery up.

Where a person has in his possession, custody or control in the course of a business¹ an illicit recording² of a performance³, a person having performer's rights⁴ or recording rights⁵ in relation to the performance⁶ may apply to the court for an order that the recording be delivered up to him or to such other person as the court may direct⁷. An application may not be made after the end of the period after which the remedy of delivery up is not available⁸; and no order may be made unless the court also makes, or it appears to the court that there are grounds for making, an order⁹ as to disposal of an illicit recording¹⁰. A person to whom a recording is delivered up in pursuance of an order for delivery up must, if an order as to the disposal of an illicit recording is not made, retain it pending the making of an order, or the decision not to make such an order¹¹. Nothing in these provisions affects any other power of the court¹².

In any event, an application for an order for delivery up in civil proceedings¹³ may not be made after the end of the period of six years from the date on which the illicit recording was made, subject to the following provisions¹⁴. If, during the whole or any part of that period, a person entitled to apply for an order is under a disability¹⁵ or is prevented by fraud or concealment from discovering the facts entitling him to apply¹⁶, an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts¹⁷.

1 For the meaning of 'business' see PARA 105 note 6 ante.

2 For the meaning of 'illicit recording' see PARAS 618, 625 ante.

3 For the meaning of 'performance' see PARA 607 ante.

4 As to performer's rights see PARA 604 ante.

5 For the meaning of 'a person having recording rights' see PARA 620 ante.

6 Ie under the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 604 et seq ante.

7 Ibid s 195(1) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). A county court may entertain proceedings under the Copyright, Designs and Patents Act 1988 s 195 (as amended): s 205(1). A county court has jurisdiction under s 195 (as amended) whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings: High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(n). Nothing in the Copyright, Designs and Patents Act 1988 s 205 is to be construed as affecting the jurisdiction of the High Court: s 205(3). As to county courts see COURTS vol 10 (Reissue) PARA 701 et seq; and as to the High Court see COURTS vol 10 (Reissue) PARA 602 et seq.

8 Ie the period specified in ibid s 203: see the text to notes 13-17 infra.

9 Ie an order under ibid s 204 (as amended): see PARA 713 post.

10 Ibid s 195(2).

11 Ibid s 195(3). For example, the court may not make such an order where the defendant shows that the illicit recording was innocently acquired by him or his predecessor in title because in that case the performer's

rights and the rights of a person having recording rights are restricted to damages not exceeding a reasonable royalty: see ss 184(2), 188(2); and PARAS 617, 624 ante.

12 Ibid s 195(4).

13 Ie an order under ibid s 195 (as amended): see the text to notes 1-12 supra.

14 Ibid s 203(1).

15 Ibid s 203(2)(a). For the meaning of 'disability' see PARA 534 note 12 ante; definition applied by s 203(3)(a).

16 Ibid s 203(2)(b).

17 Ibid s 203(2).

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712. Right to seize illicit recordings.

An illicit recording¹ of a performance² which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order for delivery up³, may be seized and detained by him or a person authorised by him⁴. The right to seize and detain is exercisable subject to the following conditions and is subject to any decision⁵ of the court as to disposal of an illicit recording⁶. The conditions are that:

- 427 (1) before anything is seized under these provisions, notice of the time and place of the proposed seizure must be given to a local police station⁷;
- 428 (2) a person may, for the purpose of exercising the right conferred by these provisions, enter premises⁸ to which the public has access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business⁹ of his and may not use any force¹⁰;
- 429 (3) at the time when anything is seized under these provisions there must be left at the place where it was seized a notice in the prescribed¹¹ form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made¹².

1 For the meaning of 'illicit recording' see PARAS 618, 625 ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 I.e. an order under the Copyright, Designs and Patents Act 1988 s 195 (as amended): see PARA 711 ante.

4 Ibid s 196(1).

5 I.e. under ibid s 204 (as amended): see PARA 713 post.

6 Ibid s 196(1).

7 Ibid s 196(2).

8 'Premises' includes land, buildings, fixed or movable structures, vehicles, vessels, aircraft and hovercraft: ibid s 196(5).

9 For the meaning of 'business' see PARA 105 note 6 ante.

10 Copyright, Designs and Patents Act 1988 s 196(3).

11 'Prescribed' means prescribed by order of the Secretary of State: ibid s 196(5). An order of the Secretary of State under s 196 must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 196(6). For the prescribed form see the Copyright and Rights in Performances (Notice of Seizure) Order 1989, SI 1989/1006, art 2, Schedule. As to the Secretary of State see PARA 183 note 2 ante.

12 Copyright, Designs and Patents Act 1988 s 196(4).

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713. Order as to disposal of illicit recording.

An application may be made to the court¹ for an order that an illicit recording² of a performance³ delivered up in pursuance of an order for delivery up in civil⁴ or criminal⁵ proceedings, or seized and detained in pursuance of the statutory right in that behalf⁶, be forfeited to such person having performer's rights⁷ or recording rights⁸ in relation to the performance as the court may direct⁹, or destroyed or otherwise dealt with as the court may think fit¹⁰, or for a decision that no such order should be made¹¹.

In considering what order, if any, should be made, the court must consider whether other remedies available in a claim for infringement of the rights conferred by the provisions¹² relating to economic rights in performances would be adequate to compensate the person or persons entitled to the rights and to protect their interests¹³. Where there is more than one person interested in a recording, the court must make such order as it thinks just and may in particular direct that the recording be sold, or otherwise dealt with, and the proceeds divided¹⁴.

Provision must be made by rules of court¹⁵ as to the service of notice on persons having an interest in the recording¹⁶; and any such person is entitled to appear in proceedings for an order, whether or not he was served with notice¹⁷, and to appeal against any order made, whether or not he appeared¹⁸. An order does not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal¹⁹.

If the court decides that no order should be made, the person in whose possession, custody or control the recording was before being delivered up or seized is entitled to its return²⁰.

1 A county court may entertain proceedings under the Copyright, Designs and Patents Act 1988 s 204 (as amended): s 205(1). A county court has jurisdiction under s 204 (as amended) whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings: High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(n). Nothing in the Copyright, Designs and Patents Act 1988 s 205 is to be construed as affecting the jurisdiction of the High Court: s 205(3). As to county courts see COURTS vol 10 (Reissue) PARA 701 et seq; and as to the High Court see COURTS vol 10 (Reissue) PARA 602 et seq.

2 For the meaning of 'illicit recording' see PARAS 618, 625 ante.

3 For the meaning of 'performance' see PARA 607 ante.

4 In pursuance of an order under the Copyright, Designs and Patents Act 1988 s 195 (as amended): see PARA 711 ante.

5 In pursuance of an order under *ibid* s 199 (as amended): see PARA 719 post.

6 In pursuance of the right conferred by *ibid* s 196: see PARA 712 ante.

7 As to performer's rights see PARA 604 ante.

8 For the meaning of 'person having recording rights' see PARA 620 ante.

9 Copyright, Designs and Patents Act 1988 s 204(1)(a).

10 *Ibid* s 204(1)(b).

11 Ibid s 204(1).

12 Ie by ibid Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante. As to claims for infringement see PARA 703 ante.

13 Ibid s 204(2) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8).

14 Copyright, Designs and Patents Act 1988 s 204(4).

15 As to the procedure see CPR 63 (as amended); and Practice Direction--Patents and other Intellectual Property Claims PD63 (as amended).

16 References to a person having an interest in a recording include any person in whose favour an order could be made in respect of the recording: (1) under the Copyright, Designs and Patents Act 1988 s 204 (as amended), s 114 (as amended) (see PARA 422 ante), or s 231 (as amended) (see PARA 535 ante); (2) under the Registered Designs Act 1949 s 24D (as added) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 767); (3) under the Trade Marks Act 1994 s 19 (including that provision as applied by the Community Trade Mark Regulations 2006, SI 2006/1027, reg 4) (see TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 463); or (4) under the Community Design Regulations 2005, SI 2005/2339, reg 1C (as added) (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 779): Copyright, Designs and Patents Act 1988 s 204(6) (amended by the Trade Marks Act 1994 s 106(1), Sch 4 para 8(1), (2); and the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 2(2), Sch 2 para 11).

17 Copyright, Designs and Patents Act 1988 s 204(3)(a).

18 Ibid s 204(3)(b).

19 Ibid s 204(3).

20 Ibid s 204(5).

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714. Application for order for the forfeiture of illicit recordings.

Where illicit recordings¹ of a performance² have come into the possession of any person in connection with the investigation or prosecution of a relevant offence³, that person may apply for an order for the forfeiture of the illicit recordings⁴. An application may be made: (1) where proceedings have been brought in any court for a relevant offence relating to some or all of the illicit recordings, to that court⁵; or (2) where no application for the forfeiture of the illicit recordings has been made under head (1) above, by way of complaint to a magistrates' court⁶.

On an application, the court must make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings⁷. A court may infer for these purposes that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question, whether by reason of being part of the same consignment or batch or otherwise⁸. An order may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making⁹ and determination of any appeal¹⁰.

Any person aggrieved by an order made under these provisions by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision to the Crown Court¹¹.

Where any illicit recordings are forfeited under these provisions, they must be destroyed in accordance with such directions as the court may give¹². However, on making an order the court may direct that the illicit recordings to which the order relates, instead of being destroyed, must be forfeited to the person having the performers' rights¹³ or recording rights¹⁴ in question or dealt with in such other way as the court considers appropriate¹⁵.

1 For the meaning of 'illicit recording' see PARAS 618, 625 ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 For these purposes, 'relevant offence' means an offence under the Copyright, Designs and Patents Act 1988 s 198(1) or s 198(1A) (as added) (criminal liability for making or dealing with illicit recordings: see PARA 715 post); an offence under the Trade Descriptions Act 1968 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 471 et seq); or an offence involving dishonesty or deception: Copyright, Designs and Patents Act 1988 s 204A(2) (s 204A added by the Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002 s 4; and the Copyright, Designs and Patents Act 1988 s 204A(2) amended by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 26(4)(c)).

4 Copyright, Designs and Patents Act 1988 s 204A(1) (as added: see note 3 supra).

5 Ibid s 204A(3)(a) (as added: see note 3 supra).

6 Ibid s 204A(3)(b) (as added: see note 3 supra). As to complaints to a magistrates' court see MAGISTRATES vol 29(2) (Reissue) PARA 681.

7 Ibid s 204A(4) (as added: see note 3 supra).

8 Ibid s 204A(5) (as added: see note 3 supra).

9 Ie including any application under the Magistrates' Courts Act 1980 s 111 (statement of case): see MAGISTRATES vol 29(2) (Reissue) PARA 885.

- 10 Copyright, Designs and Patents Act 1988 s 204A(7) (as added: see note 3 supra).
- 11 Ibid s 204A(6)(a) (as added: see note 3 supra). As to the Crown Court see COURTS vol 10 (Reissue) PARA 621 et seq.
- 12 Ibid s 204A(8) (as added: see note 3 supra).
- 13 As to performers' rights see PARA 604 et seq ante.
- 14 For the meaning of 'person having recording rights' see PARA 620 ante.
- 15 Copyright, Designs and Patents Act 1988 s 204A(9) (as added: see note 3 supra).

UPDATE

714 Application for order for the forfeiture of illicit recordings

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--'Relevant offence' also means an offence under the Business Protection from Misleading Marketing Regulations 2008, SI 2008/1276, or the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277: Copyright, Designs and Patents Act 1988 s 204A(2) (amended by SI 2008/1277).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(x) Criminal Offences/A. OFFENCES/715. Criminal liability for making, dealing with or using illicit recordings.

(x) Criminal Offences

A. OFFENCES

715. Criminal liability for making, dealing with or using illicit recordings.

A person commits an offence who without sufficient consent¹:

- 430 (1) makes for sale² or hire³; or
- 431 (2) imports⁴ into the United Kingdom⁵ otherwise than for his private and domestic use⁶; or
- 432 (3) possesses in the course of a business⁷ with a view to committing any act infringing⁸ the rights conferred by the provisions⁹ relating to economic rights in performances¹⁰; or
- 433 (4) in the course of a business: (a) sells or lets for hire¹¹; or (b) offers or exposes for sale or hire¹²; or (c) distributes¹³,

a recording¹⁴ which is, and which he knows or has reason to believe¹⁵ is, an illicit recording¹⁶.

A person commits an offence who causes a recording of a performance made without sufficient consent to be:

- 434 (i) shown or played in public¹⁷; or
- 435 (ii) communicated to the public¹⁸,

thereby infringing any economic rights in performances, if he knows or has reason to believe that those rights are thereby infringed¹⁹.

No offence is committed under any of the above provisions by the commission of an act which may be done²⁰ without infringing any of the economic rights in performances²¹.

A person guilty of an offence under the above provisions is liable to a penalty²².

1 'Sufficient consent' means: (1) in the case of a qualifying performance, the consent of the performer; and (2) in the case of a non-qualifying performance subject to an exclusive recording contract, for the purposes of the Copyright, Designs and Patents Act 1988 s 198(1)(a) (see head (1) in the text), the consent of the performer or the person having recording rights, and for the purposes of s 198(1)(b)-(d) (as amended) (see heads (2)-(4) in the text) and s 198(2) (as amended) (see the text to notes 17-19 infra), the consent of the person having recording rights: s 198(3). The references in s 198(3) to the person having recording rights are references to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them: s 198(3). For the meaning of 'qualifying performance' see PARA 609 ante; for the meaning of 'exclusive recording contract' see PARA 620 note 2 ante; and for the meaning of 'person having recording rights' see PARA 620 ante. As to consent see PARA 627 ante.

2 As to the meaning of 'sell' see PARA 330 note 6 ante.

3 Copyright, Designs and Patents Act 1988 s 198(1)(a).

4 As to the meaning of 'import' see PARA 329 note 4 ante.

- 5 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.
- 6 Copyright, Designs and Patents Act 1988 s 198(1)(b).
- 7 For the meaning of 'business' see PARA 105 note 6 ante.
- 8 As to infringement see PARAS 616-617, 623-624 ante.
- 9 Ie the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.
- 10 Ibid s 198(1)(c) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). For the meaning of 'performance' see PARA 607 ante.
- 11 Copyright, Designs and Patents Act 1988 s 198(1)(d)(i). The test of 'selling' an article is objective in the sense that it is necessary to consider only the transaction between the parties and not what was in their minds: *Phillips v Holmes* [1988] RPC 613.
- 12 Copyright, Designs and Patents Act 1988 s 198(1)(d)(ii). As to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante.
- 13 Ibid s 198(1)(d)(iii). As to the meaning of 'distribute' see PARA 330 note 11 ante.
- 14 For the meaning of 'recording' see PARA 608 ante.
- 15 As to the meaning of 'know or have reason to believe' see PARA 334 ante.
- 16 Copyright, Designs and Patents Act 1988 s 198(1). For these purposes, a recording is an illicit recording if it is an illicit recording for the purposes of s 197(2) (see PARAS 618-619 ante) or s 197(3) (see PARAS 625-626 ante): s 197(4). Section 197A(1) (as added) (see PARA 703 note 4 ante) does not apply to proceedings for an offence under s 198 (as amended); but this is without prejudice to its application in proceedings for an order under s 199 (as amended) (order for delivery up in criminal proceedings: see PARA 719 post): s 197A(2) (added by the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 2(2), Sch 2 para 10). As to offences by bodies corporate see PARA 718 post.
- 17 Copyright, Designs and Patents Act 1988 s 198(2)(a).
- 18 Ibid s 198(2)(b) (substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, reg 2(1), Sch 1 Pt 1 paras 1, 4(5)). For the meaning of 'communication to the public' see PARA 326 ante.
- 19 Copyright, Designs and Patents Act 1988 s 198(2) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 8). See also note 16 supra.
- 20 Ie by virtue of any provision of the Copyright, Designs and Patents Act 1988 s 189, Sch 2 (as amended): see PARA 676 et seq ante.
- 21 Ibid s 198(4) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, Schedule paras 1, 8).
- 22 A person guilty of an offence under head (1), head (2) or head (4)(c) in the text is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both (Copyright, Designs and Patents Act 1988 s 198(5)(a)), or on conviction on indictment to a fine or imprisonment for a term not exceeding ten years or both (s 198(5)(b) (amended by the Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002 s 1(1), (3))). For the meaning of 'the statutory maximum' see PARA 437 note 33 ante. A person guilty of any other offence under these provisions is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding six months or both: Copyright, Designs and Patents Act 1988 s 198(6). As to the standard scale see PARA 437 note 33 ante.

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716. Criminal liability for infringement of performer's making available right.

A person who infringes a performer's making available right¹:

- 436 (1) in the course of a business²; or
- 437 (2) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the making available right³,

commits an offence if he knows or has reason to believe⁴ that, by doing so, he is infringing the making available right in the recording⁵.

A person guilty of such an offence is liable to a penalty⁶.

1 For the meaning of 'making available right' see PARA 614 ante.

2 Copyright, Designs and Patents Act 1988 s 198(1A)(a) (s 198(1A) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 26(3)(a)). For the meaning of 'business' see PARA 105 note 6 ante.

3 Copyright, Designs and Patents Act 1988 s 198(1A)(b) (as added: see note 2 supra).

4 As to the meaning of 'know or have reason to believe' see PARA 334 ante.

5 Copyright, Designs and Patents Act 1988 s 198(1A) (as added: see note 2 supra). As to offences by bodies corporate see PARA 718 post.

6 Copyright, Designs and Patents Act 1988 s 198(5A) (s 198(5A) added by the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 26(3)(b)). The penalty on summary conviction is imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both (see the Copyright, Designs and Patents Act 1988 s 198(5A)(a) (as so added)), and on conviction on indictment is a fine or imprisonment for a term not exceeding two years or both (see s 198(5A)(b) (as so added)). For the meaning of 'the statutory maximum' see PARA 437 note 33 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(x) Criminal Offences/A. OFFENCES/717. False representation of authority to give consent.

717. False representation of authority to give consent.

It is an offence for a person to represent falsely that he is authorised by any person to give consent¹ in relation to a performance², unless he believes on reasonable grounds that he is so authorised³. A person guilty of such an offence is liable to a penalty⁴.

1 Ie for the purposes of the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante. As to consent see PARA 627 ante.

2 For the meaning of 'performance' see PARA 607 ante.

3 Copyright, Designs and Patents Act 1988 s 201(1) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). As to offences by bodies corporate see PARA 718 post.

4 Copyright, Designs and Patents Act 1988 s 201(2). The penalty on summary conviction is imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both: see s 201(2). As to the standard scale see PARA 437 note 33 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(x) Criminal Offences/A. OFFENCES/718. Offences by body corporate; liability of officers.

718. Offences by body corporate; liability of officers.

Where an offence¹ committed by a body corporate is proved to have been committed with the consent or connivance² of a director³, manager⁴, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly⁵.

1 Is an offence under the Copyright, Designs and Patents Act 1988 Pt II Ch 2 (ss 182-205B) (as amended): see PARAS 715-718 ante.

2 For the meaning of 'connive' see PARA 438 note 3 ante.

3 In relation to a body corporate whose affairs are managed by its members, 'director' means a member of the body corporate: Copyright, Designs and Patents Act 1988 s 202(2).

4 For the meaning of 'manager' see PARA 438 note 5 ante.

5 Copyright, Designs and Patents Act 1988 s 202(1) (amended by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, reg 2, Schedule paras 1, 8). For the equivalent provision relating to copyright see PARA 438 ante.

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B. ENFORCEMENT

719. Order for delivery up in criminal proceedings.

The court before which proceedings are brought against a person for an offence relating to criminal liability for making, dealing with or using illicit recordings or for infringement of a performer's making available right¹ may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business² an illicit recording³ of a performance⁴, order that it be delivered up to a person having performer's rights⁵ or recording rights⁶ or to such other person as the court may direct⁷. A person is treated as charged with an offence when he is orally charged or is served with a summons or indictment⁸.

An order may be made by the court of its own motion or on the application of the prosecutor, and may be made whether or not the person is convicted of the offence, but may not be made after the end of the period⁹ after which the remedy of delivery up is not available¹⁰, or if it appears to the court unlikely that any order¹¹ as to the disposal of an illicit recording or other article will be made¹². An order may not, in any case, be made after the end of the period of six years from the date on which the illicit recording in question was made¹³. An appeal lies from an order made under these provisions by a magistrates' court to the Crown Court¹⁴.

A person to whom an illicit recording is delivered up in pursuance of an order under these provisions must retain it pending the making of an order, or the decision not to make an order¹⁵, as to the disposal of the illicit recording¹⁶.

Nothing in these provisions affects the powers of the court¹⁷ to order forfeiture in criminal proceedings¹⁸.

1 le an offence under the Copyright, Designs and Patents Act 1988 s 198 (as amended): see PARAS 715-716 ante.

2 For the meaning of 'business' see PARA 105 note 6 ante.

3 For these purposes, a recording is an illicit recording if it is an illicit recording for the purposes of the Copyright, Designs and Patents Act 1988 s 197(2) (see PARAS 618-619 ante) or s 197(3) (see PARAS 625-626 ante): s 197(4).

4 For the meaning of 'performance' see PARA 607 ante.

5 As to performer's rights see PARA 604 ante.

6 For the meaning of 'person having recording rights' see PARA 620 ante.

7 Copyright, Designs and Patents Act 1988 s 199(1). Section 197A(1) (as added) (see PARA 703 note 4 ante) does not apply to proceedings for an offence under s 198 (as amended) (criminal liability for making etc illicit recordings: see PARAS 715-716 ante); but this is without prejudice to its application in proceedings for an order under s 199: s 197A(2) (added by the Intellectual Property (Enforcement, etc) Regulations 2006, SI 2006/1028, reg 2(2), Sch 2 para 10).

8 Copyright, Designs and Patents Act 1988 s 199(2)(a).

9 le the period specified in *ibid* s 203: see PARA 711 ante.

10 Ibid s 199(3)(a).

- 11 le an order under *ibid* s 204 (as amended): see PARA 713 ante.
- 12 *Ibid* s 199(3)(b).
- 13 *Ibid* s 203(4).
- 14 *Ibid* s 199(4)(a). As to the Crown Court see COURTS vol 10 (Reissue) PARA 621 et seq.
- 15 le under *ibid* s 204 (as amended): see PARA 713 ante.
- 16 *Ibid* s 199(5).
- 17 le the powers of the court under the Powers of Criminal Courts (Sentencing) Act 2000 s 143: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 481.
- 18 Copyright, Designs and Patents Act 1988 s 199(6) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 116).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(x) Criminal Offences/B. ENFORCEMENT/720. Search warrants.

720. Search warrants.

Where a justice of the peace¹ is satisfied by information on oath² given by a constable³ that there are reasonable grounds for believing that an offence of making, importing, possessing, selling or distributing illicit recordings⁴ or of infringement of a performer's making available right⁵ has been or is about to be committed in any premises⁶ and that evidence that such an offence has been or is about to be committed is in those premises⁷, he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary⁸. Such a warrant may authorise persons to accompany any constable executing the warrant⁹ and it remains in force for three months from the date of its issue¹⁰.

In executing a warrant issued under these provisions a constable may seize an article if he reasonably believes that it is evidence that any offence¹¹ has been or is about to be committed¹².

1 As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq.

2 For the meaning of 'oath' see PARA 441 note 2 ante.

3 As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

4 Ie an offence under the Copyright, Designs and Patents Act 1988 s 198(1) (as amended): see PARA 715 ante.

5 Ie an offence under ibid s 198(1A) (as added): see PARA 716 ante.

6 Ibid s 200(1)(a) (amended by the Trade Marks (Offences and Enforcement) Act 2002 s 2(1), (3)(a)(ii); and the Copyright and Related Rights Regulations 2003, SI 2003/2498, regs 3, 26(4)(a)). 'Premises' includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft: Copyright, Designs and Patents Act 1988 s 200(4).

7 Ibid s 200(1)(b).

8 Ibid s 200(1). The power conferred by this provision does not extend to authorising a search for material of the kinds mentioned in the Police and Criminal Evidence Act 1984 s 9(2) (certain classes of personal or confidential material: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 874): Copyright, Designs and Patents Act 1988 s 200(2).

9 Ibid s 200(3)(a).

10 Ibid s 200(3)(b) (amended by the Serious Organised Crime and Police Act 2005 s 174(1), Sch 16 para 6(1), (3)).

11 Ie any offence under the Copyright, Designs and Patents Act 1988 s 198(1) (as amended) (see PARA 715 ante) or s 198(1A) (as added) (see PARA 716 ante).

12 Ibid s 200(3A) (added by the Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002 s 2(1), (3)(b)).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/ (2) ECONOMIC RIGHTS/(x) Criminal Offences/B. ENFORCEMENT/721. Enforcement by local weights and measures authority.

721. Enforcement by local weights and measures authority.

As from a day to be appointed¹, it is the duty of every local weights and measures authority² to enforce within its area the provisions³ relating to criminal liability for making, dealing with or using illicit recordings or for infringement of a performer's making available right⁴.

1 The Copyright, Designs and Patents Act 1988 s 198A is added by the Criminal Justice and Public Order Act 1994 s 165(2) as from a day to be appointed: see s 172(2). At the date at which this volume states the law no such day had been appointed.

2 As to local weights and measures authorities see the Weights and Measures Act 1985 s 69 (as amended); and WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 20.

3 Ie the Copyright, Designs and Patents Act 1988 s 198 (as amended): see PARAS 715-716 ante.

4 Ibid s 198A(1) (as added: see note 1 supra). The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of the Copyright, Designs and Patents Act 1988 s 198A (as added) by such an authority as in relation to the enforcement of the Trade Descriptions Act 1968: (1) s 27 (power to make test purchases: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 508); (2) s 28 (power to enter premises and inspect and seize goods and documents: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 509); (3) s 29 (obstruction of authorised officers: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 511); and (4) s 33 (compensation for loss etc of goods seized: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 509): Copyright, Designs and Patents Act 1988 s 198A(2) (as so added). Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 applies as if the Copyright, Designs and Patents Act 1988 s 198 (as amended) were contained in the Trade Descriptions Act 1968 and as if the functions of any person in relation to the enforcement of the Copyright, Designs and Patents Act 1988 s 198 (as amended) were functions under the Trade Descriptions Act 1968: Copyright, Designs and Patents Act 1988 s 198A(4) (as so added).

Nothing in s 198A (as added) is to be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence: s 198A(5) (as so added).

UPDATE

721 Enforcement by local weights and measures authority

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 1--Day now appointed: SI 2007/621.

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(3) MORAL RIGHTS

(i) The Rights

722. Right to be identified as performer.

Subject to certain exceptions¹ and to the assertion of the right², whenever a person:

- 438 (1) produces or puts on a qualifying performance³ that is given in public⁴;
- 439 (2) broadcasts⁵ live a qualifying performance⁶;
- 440 (3) communicates to the public⁷ a sound recording⁸ of a qualifying performance⁹;
- or
- 441 (4) issues to the public copies of such a recording¹⁰,

the performer has the right to be identified as such¹¹.

The right of the performer to be identified is:

- 442 (a) in the case of a performance that is given in public, to be identified in any programme accompanying the performance or in some other manner likely to bring his identity to the notice of a person seeing or hearing the performance¹²;
- 443 (b) in the case of a performance that is broadcast, to be identified in a manner likely to bring his identity to the notice of a person seeing or hearing the broadcast¹³;
- 444 (c) in the case of a sound recording that is communicated to the public, to be identified in a manner likely to bring his identity to the notice of a person hearing the communication¹⁴;
- 445 (d) in the case of a sound recording that is issued to the public, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy¹⁵,

or, in any of the above cases, to be identified in such other manner as may be agreed between the performer and the person mentioned in heads (1) to (4) above¹⁶.

The right of the performer to be identified in relation to a performance given by a group¹⁷, or so much of a performance as is given by a group, is not infringed¹⁸:

- 446 (i) in a case falling within head (a), (b) or (c) above¹⁹; or
- 447 (ii) in a case falling within head (d) above in which it is not reasonably practicable for each member of the group to be identified²⁰,

if the group itself is identified²¹.

If the assertion of the right to be identified²² specifies a pseudonym, initials or some other particular form of identification, that form must be used; otherwise any reasonable form of identification may be used²³.

- 1 Copyright, Designs and Patents Act 1988 s 205C(6) (ss 205C, 205K both added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 6). The exceptions are those set out in the Copyright, Designs and Patents Act 1988 s 205E (as added): see PARA 724 post.
- 2 Ie in accordance with *ibid* s 205D (as added): see PARA 723 post.
- 3 For the meaning of 'qualifying performance' see PARA 609 ante.
- 4 Copyright, Designs and Patents Act 1988 s 205C(1)(a) (as added: see note 1 *supra*). Sections 205C-205N were added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, implementing the requirements of the World Intellectual Property Organisation Performances and Phonograms Treaty (Geneva 20 December 1996; Cm 3728).
- 5 For the meaning of 'broadcast' see PARA 89 ante.
- 6 Copyright, Designs and Patents Act 1988 s 205C(1)(b) (as added: see note 1 *supra*).
- 7 For the meaning of 'communication to the public' see PARA 326 ante.
- 8 For the meaning of 'sound recording' see PARA 84 ante.
- 9 Copyright, Designs and Patents Act 1988 s 205C(1)(c) (as added: see note 1 *supra*).
- 10 *Ibid* s 205C(1)(d) (as added: see note 1 *supra*).
- 11 *Ibid* s 205C(1) (as added: see note 1 *supra*). The right conferred by s 205C (as added) applies in relation to the whole or any substantial part of a performance: s 205K(1) (as so added).
- 12 *Ibid* s 205C(2)(a) (as added: see note 1 *supra*).
- 13 *Ibid* s 205C(2)(b) (as added: see note 1 *supra*).
- 14 *Ibid* s 205C(2)(c) (as added: see note 1 *supra*).
- 15 *Ibid* s 205C(2)(d) (as added: see note 1 *supra*).
- 16 *Ibid* s 205C(2) (as added: see note 1 *supra*).
- 17 'Group' means two or more performers who have a particular name by which they may be identified collectively: *ibid* s 205C(4) (as added: see note 1 *supra*).
- 18 As to infringement generally see PARA 728 et seq post.
- 19 Copyright, Designs and Patents Act 1988 s 205C(3)(a) (as added: see note 1 *supra*).
- 20 *Ibid* s 205C(3)(b) (as added: see note 1 *supra*).
- 21 *Ibid* s 205C(3) (as added: see note 1 *supra*). Identification must be as specified in s 205C(2) (as added) (see the text to notes 12-16 *supra*): s 205C(3) (as so added).
- 22 Ie under *ibid* s 205D (as added): see PARA 723 post.
- 23 *Ibid* s 205C(5) (as added: see note 1 *supra*).

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Requirement that right be asserted.

723. Requirement that right be asserted.

A person does not infringe the right¹ to be identified as performer by doing any of the specified acts² unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act³.

The right may be asserted generally, or in relation to any specified act or description of acts:

- 448 (1) by instrument in writing⁴ signed⁵ by or on behalf of the performer⁶; or
- 449 (2) on an assignment of a performer's property rights⁷, by including in the instrument effecting the assignment a statement that the performer asserts in relation to the performance his right to be identified⁸.

The persons bound by an assertion of the right are, in the case of an assertion under head (1) above, anyone to whose notice the assertion is brought⁹ and, in the case of an assertion under head (2) above, the assignee and anyone claiming through him, whether or not he has notice of the assertion¹⁰.

In a claim for infringement of the right the court must, in considering remedies¹¹, take into account any delay in asserting the right¹².

1 The right conferred by the Copyright, Designs and Patents Act 1988 s 205C (as added): see PARA 722 ante.

2 The acts mentioned in *ibid* s 205C (as added).

3 *Ibid* s 205D(1) (s 205D added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 6).

4 For the meaning of 'writing' see PARA 522 note 7 ante.

5 The requirement that an instrument be signed by a person is also satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal: Copyright, Designs and Patents Act 1988 s 210A(2) (added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 7). As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

6 Copyright, Designs and Patents Act 1988 s 205D(2)(a) (as added: see note 3 *supra*).

7 For the meaning of 'performer's property rights' see PARA 633 ante. As to assignment see PARA 637 et seq ante.

8 Copyright, Designs and Patents Act 1988 s 205D(2)(b) (as added: see note 3 *supra*).

9 *Ibid* s 205D(3)(a) (as added: see note 3 *supra*).

10 *Ibid* s 205D(3)(b) (as added: see note 3 *supra*).

11 As to remedies for infringement see PARA 728 post.

12 Copyright, Designs and Patents Act 1988 s 205D(4) (as added: see note 3 *supra*).

UPDATE

723 Requirement that right be asserted

NOTE 5--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1): see COMPANIES vol 14 (2009) PARA 283.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/(3) MORAL RIGHTS/(i) The Rights/724.
Exceptions to right.

724. Exceptions to right.

The right¹ to be identified as performer is subject to the following exceptions².

The right does not apply:

- 450 (1) where it is not reasonably practicable to identify the performer or, where identification of a group is permitted³, the group⁴;
- 451 (2) in relation to any performance⁵ given for the purposes of reporting current events⁶;
- 452 (3) in relation to any performance given for the purposes of advertising any goods or services⁷.

The right is not infringed by an act which by virtue of any of the following provisions would not infringe any of the economic rights in performances⁸:

- 453 (a) the provisions⁹ relating to news reporting¹⁰;
- 454 (b) the provisions¹¹ relating to incidental inclusion of a performance or recording¹²;
- 455 (c) the provisions¹³ relating to things done for the purposes of examination¹⁴;
- 456 (d) the provisions¹⁵ relating to parliamentary and judicial proceedings¹⁶;
- 457 (e) the provisions¹⁷ relating to Royal Commissions and statutory inquiries¹⁸.

1 le the right conferred by the Copyright, Designs and Patents Act 1988 s 205C (as added): see PARA 722 ante.

2 Ibid s 205E(1) (s 205E added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 6).

3 le by virtue of the Copyright, Designs and Patents Act 1988 s 205C(3) (as added): see PARA 722 ante.

4 Ibid s 205E(2) (as added: see note 2 supra).

5 For the meaning of 'performance' see PARA 607 ante.

6 Copyright, Designs and Patents Act 1988 s 205E(3) (as added: see note 2 supra).

7 Ibid s 205E(4) (as added: see note 2 supra).

8 le the rights conferred by ibid Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante.

9 le ibid Sch 2 para 2(1A) (as added): see PARA 677 ante.

10 Ibid s 205E(5)(a) (as added: see note 2 supra).

11 le ibid Sch 2 para 3 (as amended): see PARA 679 ante.

12 Ibid s 205E(5)(b) (as added: see note 2 supra).

13 le ibid Sch 2 para 4(2): see PARA 680 ante.

14 Ibid s 205E(5)(c) (as added: see note 2 supra).

- 15 le ibid Sch 2 para 8 (as amended): see PARA 686 ante.
- 16 Ibid s 205E(5)(d) (as added: see note 2 supra).
- 17 le ibid Sch 2 para 9 (as amended): see PARA 687 ante.
- 18 Ibid s 205E(5)(e) (as added: see note 2 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/(3) MORAL RIGHTS/(i) The Rights/725. Right to object to derogatory treatment of performance.

725. Right to object to derogatory treatment of performance.

Subject to the following exceptions¹, the performer of a qualifying performance² has a right which is infringed if:

- 458 (1) the performance³ is broadcast⁴ live⁵; or
- 459 (2) by means of a sound recording⁶ the performance is played in public or communicated to the public⁷,

with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer⁸.

The exceptions to this right to object to derogatory treatment of a performance are as follows⁹:

- 460 (a) the right does not apply in relation to any performance given for the purposes of reporting current events¹⁰;
- 461 (b) the right is not infringed by modifications made to a performance which are consistent with normal editorial or production practice¹¹;
- 462 (c) the right is not infringed by anything done for the purpose of:
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 - 18. (i) avoiding the commission of an offence¹²;
 - 19. (ii) complying with a duty imposed by or under an enactment¹³; or
 - 20. (iii) in the case of the British Broadcasting Corporation¹⁴, avoiding the inclusion in a programme broadcast by it of anything which offends against good taste or decency or which is likely to encourage or incite crime or lead to disorder or to be offensive to public feeling¹⁵.

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However, where the performer is identified in a manner likely to bring his identity to the notice of a person seeing or hearing the performance as modified by the act in question¹⁶, or he has previously been identified in or on copies of a sound recording issued to the public¹⁷, head (c) above applies only if there is sufficient disclaimer¹⁸.

The right to object to derogatory treatment of a performance¹⁹ is also infringed by a person who possesses in the course of business²⁰, or sells²¹ or lets for hire, or offers or exposes for sale²² or hire²³, or distributes²⁴, an article which is, and which he knows or has reason to believe²⁵ is, an infringing article²⁶.

1 Copyright, Designs and Patents Act 1988 s 205F(2) (ss 205F-205H, 205K all added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 6).

2 For the meaning of 'qualifying performance' see PARA 609 ante.

3 For the meaning of 'performance' see PARA 607 ante.

4 For the meaning of 'broadcast' see PARA 89 ante.

5 Copyright, Designs and Patents Act 1988 s 205F(1)(a) (as added: see note 1 supra).

6 For the meaning of 'sound recording' see PARA 84 ante.

- 7 Copyright, Designs and Patents Act 1988 s 205F(1)(b) (as added: see note 1 supra). For the meaning of 'communication to the public' see PARA 326 ante.
- 8 Ibid s 205F(1) (as added: see note 1 supra). The right conferred by s 205F (as added) applies in relation to the whole or any part of a performance: s 205K(2) (as so added).
- 9 Ibid s 205G(1) (as added: see note 1 supra).
- 10 Ibid s 205G(2) (as added: see note 1 supra).
- 11 Ibid s 205G(3) (as added: see note 1 supra).
- 12 Ibid s 205G(4)(a) (as added: see note 1 supra).
- 13 Ibid s 205G(4)(b) (as added: see note 1 supra). For the meaning of 'enactment' see PARA 55 note 4 ante.
- 14 As to the British Broadcasting Corporation see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 306 et seq.
- 15 Copyright, Designs and Patents Act 1988 s 205G(4)(c) (as added: see note 1 supra). There is no specific exception for the commercial broadcasting companies which must, therefore, rely on the exception in s 205G(4) (a) (as added): see the text to note 12 supra.
- 16 Ibid s 205G(5)(a) (as added: see note 1 supra).
- 17 Ibid s 205G(5)(b) (as added: see note 1 supra).
- 18 Ibid s 205G(5) (as added: see note 1 supra). 'Sufficient disclaimer', in relation to an act capable of infringing the right, means a clear and reasonably prominent indication:
 - 10 (1) given in a manner likely to bring it to the notice of a person seeing or hearing the performance as modified by the act in question; and
 - 11 (2) if the performer is identified at the time of the act, appearing along with the identification, that the modifications were made without the performer's consent: s 205G(6) (as so added).
- 19 Ie the right conferred by ibid s 205F (as added): see the text to notes 1-8 supra.
- 20 Ibid s 205H(1)(a) (as added: see note 1 supra). For the meaning of 'business' see PARA 105 note 6 ante.
- 21 As to the meaning of 'sell' see PARA 330 note 6 ante.
- 22 As to the meaning of 'offer or expose for sale' see PARA 330 notes 7, 8 ante.
- 23 Copyright, Designs and Patents Act 1988 s 205H(1)(b) (as added: see note 1 supra).
- 24 Ibid s 205H(1)(c) (as added: see note 1 supra). As to the meaning of 'distribute' see PARA 330 note 11 ante.
- 25 As to the meaning of 'know or have reason to believe' see PARA 334 ante.
- 26 Copyright, Designs and Patents Act 1988 s 205H(1) (as added: see note 1 supra). An 'infringing article' means a sound recording of a qualifying performance with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer: s 205H(2) (as so added).

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(ii) Duration of Rights

726. Duration of rights.

A performer's moral rights¹ subsist so long as that performer's rights² subsist in relation to the performance³.

¹ I.e. the rights in relation to a performance under the Copyright, Designs and Patents Act 1988 Pt II Ch 3 (ss 205C-205N) (as added): see PARA 722-725 ante.

² I.e. under ibid Pt II Ch 2 (ss 182-205B) (as amended): see PARA 610 et seq ante. 'Performer's rights' includes rights of a performer that are vested in a successor of his: s 205I(2) (s 205I added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 6).

³ Copyright, Designs and Patents Act 1988 s 205I(1) (as added: see note 2 supra). For the meaning of 'performance' see PARA 607 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/(3) MORAL RIGHTS/(iii) Transmission of Rights/727. Transmission of moral rights.

(iii) Transmission of Rights

727. Transmission of moral rights.

A performer's moral rights¹ are not assignable².

On the death of a person entitled to such a right:

- 463 (1) the right passes to such person as he may by testamentary disposition specifically direct³;
- 464 (2) if there is no such direction but the performer's property rights⁴ in respect of the performance⁵ in question form part of his estate, the right passes to the person to whom the property rights pass⁶;
- 465 (3) if or to the extent that the right does not pass under head (1) or head (2) above, it is exercisable by his personal representatives⁷.

Where a performer's property rights pass in part to one person and in part to another, as for example where a bequest is limited so as to apply to one or more, but not all, of the things to which the owner has the right to consent⁸, or to part, but not the whole, of the period for which the rights subsist⁹, any right which by virtue of heads (1) to (3) above passes with the performer's property rights is correspondingly divided¹⁰.

Where by virtue of head (1) or head (2) above a right becomes exercisable by more than one person:

- 466 (a) it is, in the case of the right¹¹ to object to derogatory treatment of a performance, a right exercisable by each of them and is satisfied in relation to any of them if he consents¹² to the treatment or act in question¹³; and
- 467 (b) any waiver of the right¹⁴ by one of them does not affect the rights of the others¹⁵.

A consent or waiver previously given or made binds any person to whom a right passes by virtue of heads (1) to (3) above¹⁶.

Any damages recovered by personal representatives by virtue of these provisions in respect of an infringement¹⁷ after a person's death devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death¹⁸.

1 Ie the rights conferred by the Copyright, Designs and Patents Act 1988 Pt II Ch 3 (ss 205C-205N) (as added): see PARA 722-725 ante.

2 Ibid s 205L (ss 205L, 205M both added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 6).

3 Copyright, Designs and Patents Act 1988 s 205M(1)(a) (as added: see note 2 supra).

4 For the meaning of 'performer's property rights' see PARA 633 ante.

5 For the meaning of 'performance' see PARA 607 ante.

6 Copyright, Designs and Patents Act 1988 s 205M(1)(b) (as added: see note 2 supra). As to the transmission of performer's property rights see PARA 641 et seq ante.

7 Ibid s 205M(1)(c) (as added: see note 2 supra). As to personal representatives see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 1 et seq.

8 Ibid s 205M(2)(a) (as added: see note 2 supra).

9 Ibid s 205M(2)(b) (as added: see note 2 supra).

10 Ibid s 205M(2) (as added: see note 2 supra).

11 Ie the right conferred by ibid s 205F (as added): see PARA 725 ante.

12 As to consent see PARA 729 post.

13 Copyright, Designs and Patents Act 1988 s 205M(3)(a) (as added: see note 2 supra).

14 Ie in accordance with ibid s 205J (as added): see PARA 729 post.

15 Ibid s 205M(3)(b) (as added: see note 2 supra).

16 Ibid s 205M(4) (as added: see note 2 supra).

17 As to infringement see PARAS 616-617, 623-624 ante.

18 Copyright, Designs and Patents Act 1988 s 205M(5) (as added: see note 2 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/(3) MORAL RIGHTS/(iv) Infringement/728. Remedies for infringement of moral rights.

(iv) Infringement

728. Remedies for infringement of moral rights.

An infringement of a moral right¹ is actionable as a breach of statutory duty owed to the person entitled to the right².

Where:

- 468 (1) there is an infringement of a moral right³;
- 469 (2) a person falsely claiming to act on behalf of a performer consented to the relevant conduct or purported to waive the right⁴; and
- 470 (3) there would have been no infringement if he had been so acting⁵,

that person is liable, jointly and severally with any person liable⁶ in respect of the infringement, as if he himself had infringed the right⁷.

Where proceedings for infringement of the rights conferred on a performer⁸ are taken, it is a defence to prove that a person claiming to act on behalf of the performer consented to the defendant's conduct or purported to waive the right⁹, and that the defendant reasonably believed that the person was acting on behalf of the performer¹⁰.

In proceedings for infringement of the right to object to derogatory treatment of a performance¹¹, the court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the performer from the broadcast¹² or sound recording¹³ of the performance¹⁴.

1 Ie a right conferred by the Copyright, Designs and Patents Act 1988 Pt II Ch 3 (ss 205C-205N) (as added): see PARAS 722-725 ante.

2 Ibid s 205N(1) (s 205N added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 6). As to breach of statutory duty see TORT vol 97 (2010) PARA 495 et seq. As to the transmission of moral rights see PARA 727 ante.

3 Copyright, Designs and Patents Act 1988 s 205N(2)(a) (as added: see note 2 supra).

4 Ibid s 205N(2)(b) (as added: see note 2 supra).

5 Ibid s 205N(2)(c) (as added: see note 2 supra).

6 Ie by virtue of ibid s 205N(1) (as added): see the text to notes 1-2 supra.

7 Ibid s 205N(2) (as added: see note 2 supra).

8 Ie by ibid Pt II Ch 3 (as added): see PARAS 722-725 ante.

9 Ibid s 205N(3)(a) (as added: see note 2 supra). As to consent and waiver see PARA 729 post.

10 Ibid s 205N(3)(b) (as added: see note 2 supra).

11 Ie the right conferred by ibid s 205F (as added): see PARA 725 ante. For the meaning of 'performance' see PARA 607 ante.

- 12 For the meaning of 'broadcast' see PARA 89 ante.
- 13 For the meaning of 'sound recording' see PARA 84 ante.
- 14 Copyright, Designs and Patents Act 1988 s 205N(4) (as added: see note 2 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/7. RIGHTS IN PERFORMANCES/(3) MORAL RIGHTS/(iv) Infringement/729. Consent and waiver of rights.

729. Consent and waiver of rights.

It is not an infringement of the moral rights¹ to do any act to which consent has been given by or on behalf of the person entitled to the right².

Any of those rights may be waived by instrument in writing³ signed⁴ by or on behalf of the person giving up the right⁵. A waiver:

- 471 (1) may relate to a specific performance⁶, to performances of a specified description or to performances generally, and may relate to existing or future performances⁷; and
- 472 (2) may be conditional or unconditional and may be expressed to be subject to revocation⁸,

and if made in favour of the owner or prospective owner of a performer's property rights⁹ in the performance or performances to which it relates, it must be presumed to extend to his licensees and successors in title unless a contrary intention is expressed¹⁰.

Nothing in the provisions relating to moral rights¹¹ is to be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to either of the moral rights¹².

1 Ie the rights conferred by the Copyright, Designs and Patents Act 1988 Pt II Ch 3 (ss 205C-205N) (as added): see PARAS 722-725 ante.

2 Ibid s 205J(1) (s 205J added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 6). As to the transmission of moral rights see PARA 727 ante.

3 For the meaning of 'writing' see PARA 522 note 7 ante.

4 The requirement that an instrument be signed by a person is also satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal: Copyright, Designs and Patents Act 1988 s 210A(2) (added by the Performances (Moral Rights, etc) Regulations 2006, SI 2006/18, regs 3, 7). As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added).

5 Copyright, Designs and Patents Act 1988 s 205J(2) (as added: see note 2 supra).

6 For the meaning of 'performance' see PARA 607 ante.

7 Copyright, Designs and Patents Act 1988 s 205J(3)(a) (as added: see note 2 supra).

8 Ibid s 205J(3)(b) (as added: see note 2 supra).

9 For the meaning of 'performer's property rights' see PARA 633 ante. As to the assignment of performer's property rights see PARA 637 ante; and as to the assignment of prospective rights see PARA 638 ante. As to licences see PARA 644 ante.

10 Copyright, Designs and Patents Act 1988 s 205J(3) (as added: see note 2 supra).

11 Ie ibid Pt II Ch 3 (as added): see PARA 722 et seq ante.

12 Ibid s 205J(4) (as added: see note 2 supra). As to waiver see CONTRACT vol 9(1) (Reissue) PARA 1025 et seq.

UPDATE

729 Consent and waiver of rights

NOTE 4--Companies Act 1985 s 36A(3) replaced by Companies Act 2006 s 45(1); see COMPANIES vol 14 (2009) PARA 283.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(1) IN GENERAL/730. In general.

8. DATABASES AND DATABASE RIGHT

(1) IN GENERAL

730. In general.

The Copyright, Designs and Patents Act 1988 made no specific provision for databases but in general they were protected as literary works since that term included compilations¹. Member states of the European Union were subsequently required to harmonise their laws relating to the protection of copyright in databases².

Pursuant to this requirement³ and in order also to implement certain obligations created by or arising under the EEA Agreement⁴, the Copyright and Rights in Databases Regulations 1997⁵ were made. The regulations amend certain provisions of the Copyright, Designs and Patents Act 1988, and introduce a new property right known as a 'database right'⁶. They extend to the whole of the United Kingdom⁷; and they apply⁸ to databases made before or after 1 January 1998⁹, although nothing in them affects any agreement made before that date¹⁰.

1 As to the copyright in compilations see PARA 68 ante.

2 Ie by EC Council Directive 96/9 (OJ L77, 27.3.96, p 20): see PARA 453 ante.

3 See the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 2(1)(a).

4 See *ibid* reg 2(1)(b). For these purposes, 'the EEA agreement' means the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183): Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 2(2).

5 Ie the Copyright and Rights in Databases Regulations 1997, SI 1997/3032 (as amended): see the text and notes 6-10 *infra*; and PARA 731 *et seq post*.

6 For the meaning of 'database right' see PARA 736 *post*.

7 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 1(3). For the meaning of 'United Kingdom' see PARA 3 note 1 *ante*. The Copyright and Rights in Databases Regulations 1997, SI 1997/3032, were amended by the Copyright and Rights in Databases (Amendment) Regulations 2003, 2003/2501, with effect from 1 November 2003 in order to implement an agreement in the form of an exchange of letters between the United Kingdom on behalf of the Isle of Man and the European Union extending to the Isle of Man the legal protection of databases as provided for in EC Council Directive 96/9 (OJ L77, 27.3.96, p 20) Ch III: see the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 2(1)(c) (added by SI 2003/2501); and the Copyright and Rights in Databases (Amendment) Regulations 2003, 2003/2501, reg 1(2).

8 Ie subject to the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 28 (as substituted) (see the text to note 10 *infra*; and PARA 762 note 8 *post*) and reg 29 (as amended) (see PARA 732 *post*): reg 27.

9 *Ibid* reg 27 (amended by SI 2003/2501). The date mentioned in the text is the date on which the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, came into force: see reg 1(2).

10 *Ibid* reg 28(1) (reg 28 substituted by SI 2003/2501). Nothing in the Copyright and Rights in Databases Regulations 1997, SI 1997/3032 (as amended) affects any agreement made after 31 December 1997 and before 1 November 2003 in so far as the effect would only arise as a result of the amendment of the regulations by the Copyright and Rights in Databases (Amendment) Regulations 2003, SI 2003/2501 (see note 7 *supra*): Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 28(2) (as so substituted).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(2) COPYRIGHT IN DATABASES/731. Meaning of 'database'.

(2) COPYRIGHT IN DATABASES

731. Meaning of 'database'.

'Database' means a collection of independent works, data or other materials which are arranged in a systematic or methodical way¹ and are individually accessible by electronic² or other means³.

¹ Copyright, Designs and Patents Act 1988 s 3A(1)(a) (s 3A added by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, regs 4(1), 6).

² For the meaning of 'electronic' see PARA 184 note 2 ante.

³ Copyright, Designs and Patents Act 1988 s 3A(1)(b) (as added: see note 1 supra). The term database refers to any collection of works, data or other materials, separable from one another without the value of their contents being affected, including a method or system of some sort for the retrieval of each of its constituent materials: Case C-444/02 *Fixtures Marketing Ltd v Organismos prognostikon agonon podosfairous AE (OPAP)* [2005] IP & T 453, [2004] All ER (D) 149 (Nov), ECJ. A fixture list for a football league, such as the English and Scottish football leagues, constitutes a database: Case C-444/02 *Fixtures Marketing Ltd v Organismos prognostikon agonon podosfairous AE (OPAP)* supra.

UPDATE

731 Meaning of 'database'

NOTE 3--See also *Football Dataco Ltd v Stan James (Abingdon) Ltd* [2010] EWHC 841 (Ch), [2010] All ER (D) 157 (Apr).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(2) COPYRIGHT IN DATABASES/732. Databases created on or before 27 March 1996.

732. Databases created on or before 27 March 1996.

Where a database¹ was created on or before 27 March 1996² and was a copyright work³ immediately before 1 January 1998⁴, copyright⁵ continues to subsist in that database for the remainder of its copyright term⁶.

1 For the meaning of 'database' see PARA 731 ante.

2 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 29(1)(a). The date mentioned in the text is the date on which EC Council Directive 96/9 (OJ L77, 27.3.96, p 20) (see PARA 730 ante) was published.

3 For the meaning of 'copyright work' see PARA 57 ante. As to the copyright in compilations see PARA 68 ante.

4 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 29(1)(b) (amended by SI 2003/2501). The date mentioned in the text is the date on which the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, came into force: see reg 1(2).

5 For the meaning of 'copyright' see PARA 57 ante.

6 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 29(1). For these purposes, 'copyright term' means the period of the duration of copyright under the Copyright, Designs and Patents Act 1988 s 12 (as substituted) (see PARA 96 ante): Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 29(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(2) COPYRIGHT IN DATABASES/733. Subsistence of copyright; originality.

733. Subsistence of copyright; originality.

An original database¹ is protected by copyright² as a literary work³; and there is copyright in an adaptation⁴ of a database as in the database itself⁵.

A literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of its contents the database constitutes the author's⁶ own intellectual creation⁷.

1 For the meaning of 'database' see PARA 731 ante.

2 For the meaning of 'copyright' see PARA 57 ante.

3 See the Copyright, Designs and Patents Act 1988 s 3(1) (as amended); and PARA 67 ante. For the meaning of 'literary work' see PARA 67 ante.

4 'Adaptation', in relation to a database, means an arrangement or altered version of the database or a translation of it: *ibid* s 21(3)(ac) (added by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, regs 4(1), 7(b)).

5 See the Copyright, Designs and Patents Act 1988 s 21(2); and PARA 327 ante.

6 For the meaning of 'author' see PARA 110 ante.

7 Copyright, Designs and Patents Act 1988 s 3A(2) (added by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, regs 4(1), 6).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(2) COPYRIGHT IN DATABASES/734. Acts permitted in relation to databases.

734. Acts permitted in relation to databases.

It is not an infringement of copyright¹ in a database² for a person who has a right to use the database or any part of the database, whether under a licence to do any of the acts restricted by the copyright³ in the database or otherwise, to do, in the exercise of that right, anything which is necessary for the purposes of access to and use of the contents of the database or of that part of the database⁴.

Where an act which would otherwise infringe copyright in a database is permitted under these provisions, it is irrelevant whether or not there exists any term or condition in any agreement which purports to prohibit or restrict the act, such terms being⁵ void⁶.

1 For the meaning of 'copyright' see PARA 57 ante. As to infringement of copyright see PARA 311 et seq ante.

2 For the meaning of 'database' see PARA 731 ante.

3 For the meaning of 'acts restricted by the copyright' see PARA 311 ante.

4 Copyright, Designs and Patents Act 1988 s 50D(1) (s 50D added by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, regs 4(1), 9). As to the application of the Copyright, Designs and Patents Act 1988 s 50D (as added) see PARA 337 ante.

5 Ie by virtue of ibid s 296B (as added): see PARA 735 post.

6 Ibid s 50D(2) (as added: see note 4 supra).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(2) COPYRIGHT IN DATABASES/735. Avoidance of certain terms relating to databases.

735. Avoidance of certain terms relating to databases.

Where under an agreement a person has a right to use a database¹ or part of a database, any term or condition in the agreement is void in so far as it purports to prohibit or restrict the performance of any act which would otherwise² infringe the copyright³ in the database⁴.

1 For the meaning of 'database' see PARA 731 ante.

2 Ie but for the Copyright, Designs and Patents Act 1988 s 50D (as added): see PARA 734 ante.

3 For the meaning of 'copyright' see PARA 57 ante.

4 Copyright, Designs and Patents Act 1988 s 296B (added by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, regs 4(1), 10).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(i) In general/736. Meaning of 'database right'.

(3) DATABASE RIGHT

(i) In general

736. Meaning of 'database right'.

A property right, known as a 'database right', subsists in a database¹ if there has been a substantial² investment in obtaining³, verifying⁴ or presenting the contents of the database⁵.

For these purposes, it is immaterial whether or not the database or any of its contents is a copyright work⁶.

1 For the meaning of 'database' see PARA 731 ante.

2 'Substantial', in relation to any investment, extraction or re-utilisation, means substantial in terms of quantity or quality or a combination of both: Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 12(1). 'Investment' includes any investment, whether of financial, human or technical resources: reg 12(1). For the meanings of 'extraction' and 're-utilisation' see PARA 737 post.

3 The expression 'investment in obtaining the contents' of a database must be understood to refer to the resources used to seek out existing independent materials and collect them in the database; it does not cover the resources used for the creation of materials which make up the contents of a database: Case C-203/02 *British Horseracing Board Ltd v William Hill Organisation Ltd* [2005] RPC 260, [2005] IP & T 407, ECJ; Case C-444/02 *Fixtures Marketing Ltd v Organismos prognostikon agonon podosfairous AE (OPAP)* [2005] IP & T 453, [2004] All ER (D) 149 (Nov), ECJ. In the context of drawing up a fixture list for the purpose of organising football league fixtures, the expression does not cover the resources used to establish the dates, times and the team pairings for the various matches in the league: Case C-444/02 *Fixtures Marketing Ltd v Organismos prognostikon agonon podosfairous AE (OPAP)* supra.

4 The expression 'investment in the verification of the contents' of a database must be understood to refer to the resources used, with a view to ensuring the reliability of the information contained in that database, to monitor the accuracy of the materials collected when the database was created and during its operation; the resources used for verification during the stage of creation of materials which are subsequently collected in a database do not fall within that definition: Case C-203/02 *British Horseracing Board Ltd v William Hill Organisation Ltd* [2005] RPC 260, [2005] IP & T 407, ECJ.

5 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 13(1). Regulation 13 has effect subject to reg 18 (as amended) (see PARA 739 post): reg 13(3). The resources used to draw up a list of horses in a race and to carry out checks in that connection do not constitute investment in the obtaining and verification of the contents of the database in which that list appears: Case C-203/02 *British Horseracing Board Ltd v William Hill Organisation Ltd* [2005] RPC 260, [2005] IP & T 407, ECJ. Thus a database consisting of the officially identified names of riders and runners in horse races does not qualify for database right; neither does one consisting of a list of provisional runners prior to final declarations: *British Horseracing Board Ltd v William Hill Organisation Ltd* [2005] EWCA Civ 863, [2005] RPC 883, [2006] IP & T 210.

6 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 13(2). For the meaning of 'copyright work' see PARA 57 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(i) In general/737. Meanings of 'extraction' and 're-utilisation'.

737. Meanings of 'extraction' and 're-utilisation'.

'Extraction', in relation to any contents of a database¹, means the permanent or temporary transfer of those contents to another medium by any means or in any form²; and 're-utilisation', in relation to any contents of a database, means making those contents available to the public by any means³.

The making of a copy of a database available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public is not to be taken to constitute extraction or re-utilisation of the contents of the database⁴. This does not, however, apply to the making of a copy of a database available for on-the-spot reference use⁵. Where the making of a copy of a database available through an establishment which is accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the costs of the establishment, there is no direct or indirect commercial advantage for these purposes⁶.

Where a copy of a database has been sold within the EEA⁶ or the Isle of Man by, or with the consent of, the owner of the database right⁷ in the database, the further sale within the EEA or the Isle of Man of that copy is not to be taken to constitute extraction or re-utilisation of the contents of the database⁸.

1 For the meaning of 'database' see PARA 731 ante.

2 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 12(1).

3 Ibid reg 12(1).

4 Ibid reg 12(2).

5 Ibid reg 12(4).

6 Ibid reg 12(3).

6 For the meaning of 'the EEA' see PARA 322 note 6 ante.

7 For the meaning of 'database right' see PARA 736 ante. As to who is the first owner of a database right see PARA 742 post.

8 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 12(5) (amended by SI 2003/2501).

UPDATE

737 Meanings of 'extraction' and 're-utilisation'

NOTE 2--Transfer of material from a protected database to another following on-screen consultation and individual assessment of the first database is capable of constituting an 'extraction': Case C-304/07 *Directmedia Publishing GmbH v Albert-Ludwigs-Universitat Freiburg* [2009] IP & T 69, ECJ.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(i) In general/738. Avoidance of certain terms affecting lawful users.

738. Avoidance of certain terms affecting lawful users.

A lawful user¹ of a database which has been made available to the public in any manner is entitled to extract² or re-utilise³ insubstantial⁴ parts of the contents of the database for any purpose⁵.

Where under an agreement a person has a right to use a database, or part of a database, which has been made available to the public in any manner, any term or condition in the agreement is void in so far as it purports to prevent that person from extracting or re-utilising insubstantial parts of the contents of the database, or of that part of the database, for any purpose⁶.

1 'Lawful user', in relation to a database, means any person who, whether under a licence to do any of the acts restricted by any database right in the database or otherwise, has a right to use the database: Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 12(1). For the meaning of 'database' see PARA 731 ante; and for the meaning of 'database right' see PARA 736 ante. As to the acts infringing database right see PARA 762 post.

2 For the meaning of 'extraction' see PARA 737 ante.

3 For the meaning of 're-utilisation' see PARA 737 ante.

4 'Insubstantial', in relation to part of the contents of a database, is to be construed subject to the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 16(2) (see PARA 762 post): reg 12(1). For the meaning of 'substantial' see PARA 736 note 2 ante.

5 Ibid reg 19(1).

6 Ibid reg 19(2).

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(ii) Qualification for Protection

739. Qualification for database right.

Database right¹ does not subsist in a database² unless, at the material time³, its maker⁴ or, if it was made jointly⁵, one or more of its makers, was:

- 473 (1) an individual who was a national of an EEA state⁶ or habitually resident⁷ within the EEA⁸;
- 474 (2) a body which was incorporated under the law of an EEA state and which, at that time, satisfied one of the specified conditions⁹; or
- 475 (3) a partnership or other unincorporated body which was formed under the law of an EEA state and which, at that time, satisfied the specified condition¹⁰;
- 476 (4) an individual who was habitually resident within the Isle of Man¹¹;
- 477 (5) a body which was incorporated under the law of the Isle of Man and which, at that time, satisfied one of the specified conditions¹²; or
- 478 (6) a partnership or other unincorporated body which was formed under the law of the Isle of Man and which, at that time, satisfied the specified condition¹³.

These provisions do not apply in any case¹⁴ where a database is made by or under the direction or control of the House of Commons or the House of Lords¹⁵.

1 For the meaning of 'database right' see PARA 736 ante.

2 For the meaning of 'database' see PARA 731 ante.

3 'The material time' means the time when the database was made or, if the making extended over a period, a substantial part of that period: Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 18(4) (b).

4 As to who is the maker of a database see PARAS 740-741 post.

5 For the meaning of 'jointly' see PARA 741 post.

6 For the meaning of 'EEA state' see PARA 90 note 5 ante.

7 As to residence see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 134; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 57 et seq.

8 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 18(1)(a). For the meaning of 'the EEA' see PARA 322 note 6 ante.

9 Ibid reg 18(1)(b). The specified conditions are: (1) that the body has its central administration or principal place of business within the EEA (reg 18(2)(a)); or (2) that the body has its registered office within the EEA and the body's operations are linked on an ongoing basis with the economy of an EEA state (reg 18(2)(b)).

10 Ibid reg 18(1)(c). The specified condition for these purposes is the condition in reg 18(2)(a): see note 9 head (1) supra.

11 Ibid reg 18(1)(d) (reg 18(1)(d)-(f), (2A) added by SI 2003/2501).

12 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 18(1)(e) (as added: see note 11 supra). The specified conditions are: (1) that the body has its central administration or principal place of

business within the Isle of Man (reg 18(2A)(a) (as so added)); or (2) that the body has its registered office within the Isle of Man and the body's operations are linked on an ongoing basis with the economy of the Isle of Man (reg 18(2A)(b) (as so added)).

13 Ibid reg 18(1)(f) (as added: see note 11 *supra*). The specified condition for these purposes is the condition in reg 18(2A)(a) (as added): see note 12 head (1) *supra*.

14 Ie in any case falling within *ibid* reg 14(4): see *PARA 740 post*.

15 Ibid reg 18(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(iii) Makers and Owners of Databases/A. MAKERS OF DATABASES/740. The maker of a database.

(iii) Makers and Owners of Databases

A. MAKERS OF DATABASES

740. The maker of a database.

Subject as set out below¹, the person who takes the initiative in obtaining, verifying or presenting the contents of a database² and assumes the risk of investing³ in that obtaining, verification or presentation is to be regarded as the maker of, and as having made, the database⁴.

Where a database is made by an employee in the course of his employment, his employer is to be regarded as the maker of the database, subject to any agreement to the contrary⁵. Where a database is made by Her Majesty or by an officer or servant of the Crown in the course of his duties, Her Majesty is to be regarded as the maker of the database⁶.

Where a database is made by or under the direction or control of the House of Commons or the House of Lords, the House by which, or under whose direction or control, the database is made is to be regarded as the maker of the database⁷; and, if the database is made by or under the direction or control of both Houses, the two Houses are to be regarded as the joint makers of the database⁸.

1 Ie subject to the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 14(2)-(4): see the text to notes 5-8 infra.

2 For the meaning of 'database' see PARA 731 ante.

3 For the meaning of 'investment' see PARA 736 note 2 ante.

4 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 14(1). 'Maker', in relation to a database, is to be construed in accordance with reg 14 (as amended): reg 12(1). As to databases made jointly see PARA 741 post.

5 Ibid reg 14(2). See *Cureton v Mark Insulations Ltd* [2006] All ER (D) 85 (Mar).

6 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 14(3). Regulation 14(3) is subject to reg 14(4) (see the text to notes 7-8 infra): reg 14(3).

7 Ibid reg 14(4)(a).

8 Ibid reg 14(4)(b). As to the maker of a database made by or under the direction or control of the Scottish Parliament see reg 14(4A) (added by SI 1999/1042). As to the Scottish Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

UPDATE

740 The maker of a database

NOTE 5--A list of contacts held on an employer's computer system belongs to the employer and not the employee; however, an employee is entitled to retain a list of proper journalistic sources or long-term contacts which is selectively copied and

separately maintained: *PennWell Publishing (UK) Ltd v Ornstien* [2007] EWHC 1570 (QB), [2007] IRLR 700.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(iii) Makers and Owners of Databases/A. MAKERS OF DATABASES/741. Jointly made databases.

741. Jointly made databases.

A database¹ is made jointly if two or more persons acting together in collaboration take the initiative in obtaining, verifying or presenting the contents of the database and assume the risk of investing² in that obtaining, verification or presentation³.

In relation to a database which is made jointly, references to the maker of a database are to be construed, except as otherwise provided, as references to all the makers of the database⁴.

1 For the meaning of 'database' see PARA 731 ante.

2 For the meaning of 'investment' see PARA 736 note 2 ante.

3 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 14(5).

4 Ibid reg 14(6). 'Jointly', in relation to the making of a database, is to be construed in accordance with reg 14(6): reg 12(1).

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B. OWNERS OF DATABASES

742. First ownership of database right.

The maker of a database¹ is the first owner of database right² in it³.

¹ For the meaning of 'database' see PARA 731 ante. As to who is the maker of a database see PARAS 740-741 ante.

² For the meaning of 'database right' see PARA 736 ante.

³ Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 15.

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(iv) Duration of Database Right

743. Term of protection.

Database right¹ in a database² expires at the end of the period of 15 years from the end of the calendar year in which the making of the database was completed³. Where a database is made available to the public before the end of that period of 15 years, database right in the database expires 15 years from the end of the calendar year in which the database was first made available to the public⁴.

Any substantial change to the contents of a database, including a substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial⁵ new investment⁶ qualifies the database resulting from that investment for its own term of protection⁷.

1 For the meaning of 'database right' see PARA 736 ante.

2 For the meaning of 'database' see PARA 731 ante.

3 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 17(1). Regulation 17 has effect subject to reg 30 (as substituted) (see PARA 744 post): reg 17(4).

4 Ibid reg 17(2).

5 For the meaning of 'substantial' see PARA 736 note 2 ante.

6 For the meaning of 'investment' see PARA 736 note 2 ante.

7 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 17(3).

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744. Databases completed on or after 1 January 1983 and before 1 January 1998.

Where:

479 (1) the making of any database¹ is completed on or after 1 January 1983, and
before 1 January 1998²; and

480 (2) either:

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21. (a) the database is a database in which database right³ subsists⁴ by virtue of the maker⁵ of the database, or one or more of its makers, falling within one of certain provisions⁶ and database right begins to subsist in the database on 1 January 1998⁷; or

22. (b) the database is a database in which database right subsists by virtue of its maker, or one or more of its makers, falling within one of certain provisions⁸ and database right begins to subsist in the database on 1 November 2003⁹,

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then database right subsists in the database for a period of 15 years beginning with 1 January 1998¹⁰.

1 For the meaning of 'database' see PARA 731 ante.

2 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 30(a) (reg 30 substituted by SI 2003/2501).

3 For the meaning of 'database right' see PARA 736 ante.

4 As to the subsistence of database right see PARAS 736, 739 ante.

5 As to who is the maker of a database see PARAS 740-741 ante.

6 I.e. one of the provisions contained in the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 14(4) (see PARA 740 ante) and reg 18(1)(a), (b) and (c) (as amended) (see PARA 739 ante).

7 Ibid reg 30(b)(i) (as substituted: see note 2 supra).

8 I.e. one of the provisions contained in ibid reg 18(1)(d), (e) and (f) (as added) (see PARA 739 ante).

9 Ibid reg 30(b)(ii) (as substituted: see note 2 supra).

10 Ibid reg 30 (as substituted: see note 2 supra).

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(v) Dealings with Database Right

A. IN GENERAL

745. Application of copyright provisions to database right.

The provisions of the Copyright, Designs and Patents Act 1988 relating to dealings with rights in copyright works¹ apply in relation to database right² and databases³ in which that right subsists⁴ as they apply in relation to copyright and copyright works⁵.

1 In the Copyright, Designs and Patents Act 1988 ss 90-93: see PARA 158 et seq ante.

2 For the meaning of 'database right' see PARA 736 ante.

3 For the meaning of 'database' see PARA 731 ante.

4 As to the subsistence of database right see PARAS 736, 739 ante.

5 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 23 (substituted by SI 2006/1028).

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B. LICENCES

(A) IN GENERAL

746. Jurisdiction of the Copyright Tribunal.

In addition to its jurisdiction in respect of matters relating to copyright¹ and rights in performances², the Copyright Tribunal³ has jurisdiction under the provisions relating to database right⁴ to hear and determine proceedings relating to:

- 481 (1) references⁵ of a licensing scheme⁶;
- 482 (2) applications⁷ with respect to a licence under a licensing scheme⁸;
- 483 (3) references or applications⁹ with respect to a licence by a licensing body¹⁰.

The general statutory provisions relating to the Copyright Tribunal¹¹ apply in relation to the Tribunal when exercising any jurisdiction in relation to database right¹².

1 See PARA 211 ante.

2 See PARA 651 ante.

3 As to the Copyright Tribunal see PARA 207 ante.

4 Ie the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Pt III (regs 12-25) (as amended). For the meaning of 'database right' see PARA 736 ante.

5 Ie references under ibid reg 24, Sch 2 para 3 (see PARA 749 post), Sch 2 para 4 (see PARA 750 post) or Sch 2 para 5 (see PARA 751 post).

6 Ibid reg 25(1)(a).

7 Ie applications under ibid Sch 2 para 6 (see PARA 752 post) or Sch 2 para 7 (see PARA 753 post).

8 Ibid reg 25(1)(b).

9 Ie references or applications under ibid Sch 2 para 10 (see PARA 756 post), Sch 2 para 11 (see PARA 757 post) or Sch 2 para 12 (see PARA 758 post).

10 Ibid reg 25(1)(c).

11 Ie the provisions of the Copyright, Designs and Patents Act 1988 Pt I Ch VIII (ss 145-152) (as amended): see PARA 207 et seq ante.

12 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 25(2). Provision must be made by rules under the Copyright, Designs and Patents Act 1988 s 150 (see PARA 212 ante) prohibiting the Tribunal from entertaining a reference under the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 3, 4 or 5 by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent: reg 25(3). At the date at which this volume states the law no such provision had been made.

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747. Meanings of 'licensing scheme' and 'licensing body'.

A 'licensing scheme' means a scheme setting out:

- 484 (1) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant database right licences¹; and
- 485 (2) the terms on which licences would be granted in those classes of case²,

and, for this purpose, a 'scheme' includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name³.

A 'licensing body' means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a database right or as agent for him, of database right licences, and whose objects include the granting of licences covering the databases⁴ of more than one maker⁵.

¹ Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 1(1)(a). 'Database rights licences' means licences to do, or authorise the doing of, any of the things for which consent is required under reg 16 (see PARA 762 post): Sch 2 para 1(3). For the meaning of 'database right' see PARA 736 ante.

² Ibid Sch 2 para 1(1)(b).

³ Ibid Sch 2 para 1(1).

⁴ For the meaning of 'database' see PARA 731 ante.

⁵ Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 1(2). As to who is the maker of a database see PARAS 740-741 ante.

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(B) REFERENCES AND APPLICATIONS WITH RESPECT TO LICENSING SCHEMES

748. Types of licensing schemes subject to the Copyright Tribunal's control.

The jurisdiction¹ of the Copyright Tribunal² extends to licensing schemes³ operated by licensing bodies⁴ in relation to databases⁵ of more than one maker⁶, so far as they relate to licences for extracting⁷ or re-utilising⁸ all or a substantial⁹ part of the contents of a database¹⁰.

1 Ie under the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 paras 3-8: see PARA 749 et seq post.

2 As to the Copyright Tribunal see PARA 207 ante.

3 For the meaning of 'licensing scheme' see PARA 747 ante.

4 For the meaning of 'licensing body' see PARA 747 ante.

5 For the meaning of 'database' see PARA 731 ante.

6 As to who is the maker of a database see PARAS 740-741 ante.

7 For the meaning of 'extraction' see PARA 737 ante.

8 For the meaning of 're-utilisation' see PARA 737 ante.

9 For the meaning of 'substantial' see PARA 736 note 2 ante.

10 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 2. References in Sch 2 paras 3-8 (see PARA 749 et seq post) to a licensing scheme are to be construed accordingly: Sch 2 para 2.

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749. Reference of proposed licensing scheme to the Copyright Tribunal.

The terms of a licensing scheme¹ proposed to be operated by a licensing body² may be referred to the Copyright Tribunal³ by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case⁴.

The Tribunal must first decide whether to entertain the reference; and it may decline to do so on the ground that the reference is premature⁵. If the Tribunal decides to entertain the reference, it must consider the matter referred and make such order, confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable⁶ in the circumstances⁷. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁸.

1 For the meaning of 'licensing scheme' see PARA 747 ante. See also PARA 748 note 10 ante.

2 For the meaning of 'licensing body' see PARA 747 ante.

3 As to the Copyright Tribunal see PARA 207 ante.

4 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 3(1).

5 Ibid Sch 2 para 3(2).

6 As to the criteria as to reasonableness see PARA 760 post.

7 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 3(3). As to the effect of such an order see PARA 754 post. As to appeals against decisions of the Tribunal see PARA 309 ante.

8 Ibid Sch 2 para 3(4).

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750. Reference of licensing scheme to the Copyright Tribunal.

If, while a licensing scheme¹ is in operation, a dispute arises between the operator of the scheme and a person claiming that he requires a licence in a case of a description to which the scheme applies² or an organisation claiming to be representative of such persons³, that person or organisation may refer the scheme to the Copyright Tribunal⁴, in so far as it relates to cases of that description⁵. A scheme which has been so referred to the Tribunal remains in operation until proceedings on the reference are concluded⁶.

The Tribunal must consider the matter in dispute and make such order, confirming or varying the scheme, so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable⁷ in the circumstances⁸. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁹.

1 For the meaning of 'licensing scheme' see PARA 747 ante. See also PARA 748 note 10 ante.

2 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 4(1)(a).

3 Ibid Sch 2 para 4(1)(b).

4 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction see PARA 746 ante.

5 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 4(1).

6 Ibid Sch 2 para 4(2).

7 As to the criteria as to reasonableness see PARA 760 post.

8 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 4(3). As to the effect of such an order see PARA 754 post. As to appeals against decisions of the Tribunal see PARA 309 ante.

9 Ibid Sch 2 para 4(4).

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751. Further reference of scheme to the Copyright Tribunal.

Where the Copyright Tribunal¹ has on a previous reference of a licensing scheme² made an order with respect to the scheme, then, while the order remains in force³:

- 486 (1) the operator of the scheme⁴;
- 487 (2) a person claiming that he requires a licence in a case of the description to which the order relates⁵; or
- 488 (3) an organisation claiming to be representative of such persons⁶,

may refer the scheme again to the Tribunal, so far as it relates to cases of that description⁷. A scheme which has been referred to the Tribunal under these provisions remains in operation until proceedings on the reference are concluded⁸.

A licensing scheme may not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases within 12 months from the date of the order on the previous reference⁹ or, if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order¹⁰.

The Tribunal must consider the matter in dispute and make such order, confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable¹¹ in the circumstances¹². The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine¹³.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction see PARA 746 ante.

2 I.e. under the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 3 (see PARA 749 ante) or Sch 2 para 4 (see PARA 750 ante) or Sch 2 para 5 (see infra). For the meaning of 'licensing scheme' see PARA 747 ante. See also PARA 748 note 10 ante.

3 As to the period for which an order remains in force see the text to note 13 infra; and PARAS 749-750 ante.

4 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 5(1)(a).

5 Ibid Sch 2 Para 5(1)(b).

6 Ibid Sch 2 Para 5(1)(c).

7 Ibid Sch 2 Para 5(1).

8 Ibid Sch 2 para 5(3).

9 Ibid Sch 2 para 5(2)(a).

10 Ibid Sch 2 para 5(2)(b).

11 As to the criteria as to reasonableness see PARA 760 post.

12 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 5(4). As to the effect of such an order see PARA 754 post. As to appeals against decisions of the Tribunal see PARA 309 ante.

13 Ibid Sch 2 para 5(5).

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752. Application for grant of licence in connection with licensing scheme.

A person who claims, in a case covered by a licensing scheme¹, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal².

A person who claims, in a case excluded from a licensing scheme³, that the operator of the scheme either:

- 489 (1) has refused to grant him a licence or to procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted⁴; or
- 490 (2) proposes terms for a licence which are unreasonable⁵,

may apply to the Tribunal⁶.

If the Tribunal is satisfied that the claim is well-founded, it must make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable⁷ in the circumstances⁸. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁹.

1 For the meaning of 'licensing scheme' see PARA 747 ante. See also PARA 748 note 10 ante.

2 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 6(1). As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction see PARA 746 ante.

3 A case is to be regarded as excluded from a licensing scheme if:

- 12 (1) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception (ibid Sch 2 para 6(3)(a)); or
- 13 (2) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way (Sch 2 para 6(3)(b)).

4 Ibid Sch 2 para 6(2)(a).

5 Ibid Sch 2 para 6(2)(b).

6 Ibid Sch 2 para 6(2).

7 As to the criteria as to reasonableness see PARA 760 post.

8 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 6(4). As to applications for the review of such an order see PARA 753 post.

9 Ibid Sch 2 para 6(5).

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753. Application for review of order as to entitlement to licence.

Where the Copyright Tribunal¹ has made an order² that a person is entitled to a licence under a licensing scheme³, the operator of the scheme or the original applicant may apply to the Tribunal to review its order⁴. An application must not be made, except with the special leave of the Tribunal:

- 491 (1) within 12 months from the date of the order, or of the decision on a previous such application⁵; or
- 492 (2) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application is due to expire within 15 months of that decision, until the last three months before the expiry date⁶.

The Tribunal must on an application for review confirm or vary its order as it may determine to be reasonable⁷, having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case⁸.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction see PARA 746 ante.

2 I.e. under the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 6: see PARA 752 ante.

3 For the meaning of 'licensing scheme' see PARA 747 ante. See also PARA 748 note 10 ante.

4 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 7(1).

5 Ibid Sch 2 para 7(2)(a).

6 Ibid Sch 2 para 7(2)(b).

7 As to the criteria as to reasonableness see PARA 760 post.

8 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 7(3). As to the effect of such an order see PARA 754 post. As to appeals against decisions of the Tribunal see PARA 309 ante.

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754. Effect of Copyright Tribunal's order as to licensing scheme.

A licensing scheme¹ which has been confirmed or varied by the Copyright Tribunal² is in force or, as the case may be, remains in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force³.

While the order is in force, a person who in a case of a class to which the order applies:

- 493 (1) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained⁴; and
- 494 (2) complies with the other terms applicable to such a licence under the scheme⁵,

is in the same position as regards infringement of database right⁶ as if he had at all material times been the holder of a licence granted by the owner of the database right in question in accordance with the scheme⁷.

The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation⁸. If such a direction is made, any necessary repayments, or further payments, must be made in respect of charges already paid⁹; and the reference in head (1) above to the charges payable under the scheme are to be construed as a reference to the charges so payable by virtue of the order¹⁰.

Where the Tribunal has made an order as to entitlement to a licence under a licensing scheme¹¹ and the order remains in force¹², the person in whose favour the order is made is, if he:

- 495 (a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained¹³; and
- 496 (b) complies with the other terms specified in the order¹⁴,

in the same position as regards infringement of database right as if he had at all material times been the holder of a licence granted by the owner of the database right in question on the terms specified in the order¹⁵.

1 For the meaning of 'licensing scheme' see PARA 747 ante. See also PARA 748 note 10 ante.

2 I.e. under the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 3 (see PARA 749 ante), Sch 2 para 4 (see PARA 750 ante) or Sch 2 para 5 (see PARA 751 ante). As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction see PARA 746 ante.

3 Ibid Sch 2 para 8(1). As to the period for which such orders remain in force see PARAS 749-751 ante.

4 Ibid Sch 2 para 8(2)(a).

5 Ibid Sch 2 para 8(2)(b).

6 For the meaning of 'database right' see PARA 736 ante. As to infringement of database right see PARA 762 post.

7 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 8(2).

8 Ibid Sch 2 para 8(3). No such direction may be given where Sch 2 para 8(4) (see the text to notes 11-15 infra) applies: Sch 2 para 8(3).

9 Ibid Sch 2 para 8(3)(a).

10 Ibid Sch 2 para 8(3)(b).

11 Ie an order under ibid Sch 2 para 6: see PARA 752 ante.

12 As to the period for which such an order remains in force see PARA 752 ante.

13 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 8(4)(a).

14 Ibid Sch 2 para 8(4)(b).

15 Ibid Sch 2 para 8(4).

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(C) REFERENCES AND APPLICATIONS WITH RESPECT TO LICENSING BODIES

755. In general.

In addition to its jurisdiction in relation to licensing schemes¹, the Copyright Tribunal² has jurisdiction³ over licences relating to database right⁴ which cover databases⁵ of more than one maker⁶ granted by a licensing body⁷ otherwise than in pursuance of a licensing scheme, so far as the licences authorise extracting⁸ or re-utilising⁹ all or a substantial¹⁰ part of the contents of a database¹¹.

1 See PARAS 748-754 ante. For the meaning of 'licensing scheme' see PARA 747 ante.

2 As to the Copyright Tribunal see PARA 207 ante.

3 Ie under the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 paras 10-13: see PARA 756 et seq post.

4 For the meaning of 'database right' see PARA 736 ante.

5 For the meaning of 'database' see PARA 731 ante.

6 As to who is the maker of a database see PARAS 740-741 ante.

7 For the meaning of 'licensing body' see PARA 747 ante.

8 For the meaning of 'extraction' see PARA 737 ante.

9 For the meaning of 're-utilisation' see PARA 737 ante.

10 For the meaning of 'substantial' see PARA 736 note 2 ante.

11 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 9.

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756. Reference to Copyright Tribunal of proposed licence.

The terms on which a licensing body¹ proposes to grant a licence may be referred to the Copyright Tribunal² by the prospective licensee³.

The Tribunal must first decide whether to entertain the reference; and it may decline to do so on the ground that the reference is premature⁴. If the Tribunal decides to entertain the reference, it must consider the terms of the proposed licence and make such order, confirming or varying the terms as it may determine to be reasonable⁵ in the circumstances⁶. The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁷.

1 For the meaning of 'licensing body' see PARA 747 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction see PARA 755 ante.

3 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 10(1).

4 Ibid Sch 2 para 10(2).

5 As to the criteria as to reasonableness see PARA 760 post.

6 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 10(3). As to applications to review such an order see PARA 758 post; and as to the effect of such an order see PARA 759 post.

7 Ibid reg 10(4).

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757. Reference to Copyright Tribunal of expiring licence.

A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body¹, may apply to the Copyright Tribunal² on the ground that it is unreasonable in the circumstances that the licence should cease to be in force³. Such an application may not be made until the last three months before the licence is due to expire⁴. A licence in respect of which a reference has been made to the Tribunal remains in operation until proceedings on the reference are concluded⁵.

If the Tribunal finds the application well-founded, it must make an order declaring that the licensee continues to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable⁶ in the circumstances⁷. An order of the Tribunal under these provisions may be made so as to be in force indefinitely or for such period as the Tribunal may determine⁸.

1 For the meaning of 'licensing body' see PARA 747 ante.

2 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction see PARA 755 ante.

3 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 11(1).

4 Ibid Sch 2 para 11(2).

5 Ibid Sch 2 para 11(3).

6 As to the criteria as to reasonableness see PARA 760 post.

7 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 11(4). As to applications to review such an order see PARA 758 post; and as to the effect of such an order see PARA 759 post.

8 Ibid Sch 2 para 11(5).

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758. Application for review of order as to licence.

Where the Copyright Tribunal¹ has made an order as to a licence², the licensing body³ or the person entitled to the benefit of the order may apply to the Tribunal to review its order⁴. An application may not be made, except with the special leave of the Tribunal:

- 497 (1) within 12 months from the date of the order or of the decision on a previous such application⁵; or
- 498 (2) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous such application is due to expire within 15 months of that decision, until the last three months before the expiry date⁶.

The Tribunal must on an application for review confirm or vary its order as the Tribunal may determine to be reasonable⁷ in the circumstances⁸.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction see PARA 755 ante.

2 I.e. under the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 10 (see PARA 756 ante) or Sch 2 para 11 (see PARA 757 ante).

3 For the meaning of 'licensing body' see PARA 747 ante.

4 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 12(1).

5 Ibid Sch 2 para 12(2)(a).

6 Ibid Sch 2 para 12(2)(b).

7 As to the criteria as to reasonableness see PARA 760 post.

8 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 12(3). As to the effect of such an order see PARA 759 post. As to appeals against decisions of the Tribunal see PARA 309 ante.

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759. Effect of order of Copyright Tribunal as to licence.

Where the Copyright Tribunal¹ has made an order² and the order remains in force³, the person entitled to the benefit of the order is, if he:

- 499 (1) pays to the licensing body⁴ any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained⁵; and
- 500 (2) complies with the other terms specified in the order⁶,

in the same position as regards infringement of database right⁷ as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order⁸.

The benefit of the order may be assigned:

- 501 (a) in the case of an order in respect of a proposed licence⁹, if assignment is not prohibited under the terms of the Tribunal's order¹⁰; and
- 502 (b) in the case of an order in respect of an expiring licence¹¹, if assignment was not prohibited under the terms of the original licence¹².

The Tribunal may direct that an order in respect of a proposed or expiring licence¹³, or an order in respect of the review of a licence¹⁴ varying such an order, so far as it varies the amount of charges payable, is to have effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire¹⁵. If such a direction is made, any necessary repayments, or further payments, must be made in respect of charges already paid¹⁶; and the reference in head (1) above to the charges payable in accordance with the order is to be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order¹⁷.

1 As to the Copyright Tribunal see PARA 207 ante; and as to its jurisdiction see PARA 755 ante.

2 Ie under the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 10 (see PARA 756 ante) or Sch 2 para 11 (see PARA 757 ante).

3 As to the period for which such orders remain in force see PARAS 756-757 ante.

4 For the meaning of 'licensing body' see PARA 747 ante.

5 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 13(1)(a).

6 Ibid Sch 2 para 13(1)(b).

7 For the meaning of 'database right' see PARA 736 ante. As to infringement of database right see PARA 762 post.

8 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 13(1).

- 9 le an order under ibid Sch 2 para 10: see PARA 756 ante.
- 10 Ibid Sch 2 para 13(2)(a).
- 11 le an order under ibid Sch 2 para 11: see PARA 757 ante.
- 12 Ibid Sch 2 para 13(2)(b).
- 13 le an order under ibid Sch 2 para 10 (see PARA 756 ante) or Sch 2 para 11 (see PARA 757 ante).
- 14 le an order under ibid Sch 2 para 12: see PARA 758 ante.
- 15 Ibid Sch 2 para 13(3). As to appeals against decisions of the Tribunal see PARA 309 ante.
- 16 Ibid Sch 2 para 13(3)(a).
- 17 Ibid Sch 2 para 13(3)(b).

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(D) CRITERIA AS TO REASONABLENESS

760. Criteria as to reasonableness.

In determining what is reasonable on a reference or application¹ relating to a licensing scheme² or licence, the Copyright Tribunal³ must have regard to:

- 503 (1) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances⁴; and
- 504 (2) the terms of those schemes or licences⁵,

and it must exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licences under other schemes operated by, or other licences granted by, the same person⁶.

¹ ie on a reference or application under the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2: see PARA 747 et seq ante.

² For the meaning of 'licensing scheme' see PARA 747 ante.

³ As to the Copyright Tribunal see PARA 207 ante.

⁴ Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 14(a).

⁵ Ibid Sch 2 para 14(b).

⁶ Ibid Sch 2 para 14.

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(E) LICENCES OF RIGHT

761. Powers exercisable in consequence of competition report.

Where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Office of Fair Trading or, as the case may be, the Competition Commission¹ under the power² to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations or the power³ to take remedial action following references to the Commission in connection with European mergers, consists of or includes:

- 505 (1) conditions in licences granted by the owner of database right⁴ in a database⁵ restricting the use of the database by the licensee or the right of the owner of the database right to grant other licences⁶; or
- 506 (2) a refusal of an owner of database right to grant licences on reasonable terms⁷,

the powers relating to enforcement orders⁸ include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the database right are to be available as of right⁹.

The terms of a licence available by virtue of these provisions must, in default of agreement, be settled by the Copyright Tribunal¹⁰ on an application by the person requiring the licence; and terms so settled must authorise the licensee to do everything in respect of which a licence is so available¹¹. Where the terms of a licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made¹².

1 As to the Secretary of State see PARA 183 note 2 ante; as to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6; and as to the Competition Commission see COMPETITION vol 18 (2009) PARA 9-15.

2 Ie under the Competition Act 1980 s 12(5) or the Enterprise Act 2002 s 41(2), s 55(2), s 66(6), s 75(2), s 83(2), s 138(2), s 147(2) or s 160(2), or Sch 7 para 5(2) or Sch 7 para 10(2): see COMPETITION vol 18 (2009) PARAS 10, 188 et seq.

3 Ie under the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, SI 2003/1592, art 12(7) or Sch 2 para 5(2) or Sch 2 para 10(2): see COMPETITION vol 18 (2009) PARA 214.

4 For the meaning of 'database right' see PARA 736 ante. As to first ownership of database right see PARA 742 ante.

5 For the meaning of 'database' see PARA 731 ante.

6 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 24, Sch 2 para 15(1)(a) (Sch 2 para 15(1), (2) substituted, and Sch 2 para 15(1A) added, by SI 2003/1398).

7 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 15(1)(b) (as substituted: see note 6 supra).

8 Ie the powers conferred by the Enterprise Act 2002 Sch 8: see COMPETITION vol 18 (2009) PARA 232 et seq.

9 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 2 para 15(1A) (as added: see note 6 supra). The references to anything permitted by the Enterprise Act 2002 Sch 8 in the Competition Act 1980 s 12(5A) (as added), the Enterprise Act 2002 s 75(4)(a), s 83(4)(a), s 84(2)(a), s 89(1), s 160(4)(a), s 161(3)(a) and s 164(1), and Sch 7 paras 5, 10 and 11, and the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, SI 2003/1592, Sch 2 paras 5, 10 and 11 (see COMPETITION vol 18 (2009) PARA 214) must be construed accordingly: Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 15(2) (as substituted: see note 6 supra).

10 As to the Copyright Tribunal see PARA 207 ante.

11 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 15(3). As to appeals against decisions of the Tribunal see PARA 309 ante.

12 Ibid reg 15(4).

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(vi) Infringement of Database Right

762. Acts infringing database right.

A person infringes¹ database right² in a database³ if, without the consent of the owner of the right⁴, he extracts⁵ or re-utilises⁶ all or a substantial⁷ part of the contents of the database⁸.

The repeated and systematic extraction or re-utilisation of insubstantial⁹ parts of the contents of a database may amount to the extraction or re-utilisation of a substantial part of those contents¹⁰.

1 le subject to the provisions of the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Pt III (regs 12-25) (as amended). As to exceptions to database right see PARA 763 et seq post; and as to remedies for infringement see PARA 772 post.

2 For the meaning of 'database right' see PARA 736 ante.

3 For the meaning of 'database' see PARA 731 ante.

4 As to first ownership of database right see PARA 742 ante.

5 For the meaning of 'extraction' see PARA 737 ante. See also note 6 infra.

6 For the meaning of 're-utilisation' see PARA 737 ante. The terms 'extraction' and 're-utilisation' must be interpreted as referring to any unauthorised act of appropriation and distribution to the public of the whole or a part of the contents of a database; those terms do not imply direct access to the database concerned; and the fact that the contents of a database were made accessible to the public by its maker or with his consent does not affect the right of the maker to prevent acts of extraction and/or re-utilisation of the whole or a substantial part of the contents of a database: Case C-203/02 *British Horseracing Board Ltd v William Hill Organisation Ltd* [2005] RPC 260, [2005] IP & T 407, ECJ.

7 For the meaning of 'substantial' see PARA 736 note 2 ante. The expression 'substantial part' refers to the volume of data extracted from the database and/or re-utilised and must be assessed in relation to the total volume of the contents of the database; that expression also refers to the scale of the investment in the obtaining, verification or presentation of the contents of the subject of the act of extraction and/or re-utilisation, regardless of whether that subject represents a quantitatively substantial part of the general contents of the protected database: Case C-203/02 *British Horseracing Board Ltd v William Hill Organisation Ltd* [2005] RPC 260, [2005] IP & T 407, ECJ.

8 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 16(1). In relation to database right there is no spare parts defence or any analogous defence: *Mars UK Ltd v Teknowledge Ltd* [1999] IP & T 26, [1999] All ER (D) 600. As to the spare parts defence in relation to copyright see PARA 406 ante. See also *Pearce v Elecheck Ltd* [2005] EWHC 3187 (Ch); *Pearce v Elecheck Ltd* [2005] EWHC 3044 (Ch), [2005] All ER (D) 83 (Dec).

No act done in respect of any database, in which database right subsists by virtue of the maker of the database (or one or more of its makers) falling within one of the provisions contained in the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 14(4) (see PARA 740 ante) and reg 18(1)(a), (b) and (c) (as amended) (see PARA 739 ante), before 1 January 1998, or after 31 December 1997 in pursuance of an agreement made before 1 January 1998, is to be regarded as an infringement of database right in the database: reg 28(3) (reg 28(3), (4) substituted by SI 2003/1501). No act done in respect of any database, in which database right subsists by virtue of its maker (or one or more of its makers) falling within one of the provisions contained in the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 18(1)(d), (e) and (f) (as added) (see PARA 739 ante), before 1 November 2003, or after 31 October 2003 in pursuance of an agreement made before 1 November 2003, is to be regarded as an infringement of database right in the database: reg 28(4) (as so substituted). As to who is the maker of a database see PARAS 740-741 ante.

9 For the meaning of 'insubstantial' see PARA 738 note 4 ante. Any part which does not fulfil the definition of a substantial part, evaluated both quantitatively and qualitatively (see note 7 supra), falls within the definition of an insubstantial part of the contents of a database: Case C-203/02 *British Horseracing Board Ltd v William Hill Organisation Ltd* [2005] RPC 260, [2005] IP & T 407, ECJ.

10 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 16(2).

UPDATE

762 Acts infringing database right

NOTES 5, 6--See Case C-304/07 *Directmedia Publishing GmbH v Albert-Ludwigs-Universität Freiburg* [2009] IP & T 69, ECJ; and PARA 737.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(vii) Exceptions to Database Right/763. Fair dealing.

(vii) Exceptions to Database Right

763. Fair dealing.

Database right¹ in a database² which has been made available to the public in any manner is not infringed³ by fair dealing⁴ with a substantial⁵ part of its contents if:

- 507 (1) that part is extracted⁶ from the database by a person who is otherwise a lawful user⁷ of the database⁸;
- 508 (2) it is extracted for the purpose of illustration for teaching or research and not for any commercial purpose⁹; and
- 509 (3) the source is indicated¹⁰.

1 For the meaning of 'database right' see PARA 736 ante.

2 For the meaning of 'database' see PARA 731 ante.

3 As to infringement of database right see PARA 762 ante.

4 As to fair dealing in respect of copyright see PARAS 338-340 ante.

5 For the meaning of 'substantial' see PARA 736 note 2 ante.

6 For the meaning of 'extraction' see PARA 737 ante.

7 For the meaning of 'lawful user' see PARA 738 note 1 ante.

8 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20(1)(a).

9 Ibid reg 20(1)(b).

10 Ibid reg 20(1)(c). The provisions of reg 20(2), Sch 1 (see PARAS 765-770 post) specify other acts which may be done in relation to a database notwithstanding the existence of database right: reg 20(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(vii) Exceptions to Database Right/764. Deposit libraries.

764. Deposit libraries.

Database right¹ in a database² is not infringed³ by the copying of a work from the internet by a deposit library⁴ or person acting on its behalf if the work is of a description prescribed by regulations under⁵ the Legal Deposit Libraries Act 2003⁶, its publication on the internet, or a person publishing it there, is connected with the United Kingdom⁷ in a manner so prescribed⁸, and the copying is done in accordance with any conditions so prescribed⁹.

Database right in a database is not infringed by the doing of anything in relation to relevant material¹⁰ permitted to be done under regulations made under¹¹ the Legal Deposit Libraries Act 2003¹².

1 For the meaning of 'database right' see PARA 736 ante.

2 For the meaning of 'database' see PARA 731 ante.

3 As to infringement of database right see PARA 762 ante.

4 For these purposes, 'deposit library' has the same meaning as in the Legal Deposit Libraries Act 2003 (see PARA 15 note 3 ante): Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20A(4) (reg 20A added by the Legal Deposit Libraries Act 2003 s 8(2)). As to the Legal Deposit Libraries Act 2003 see LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS; NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 898.

5 Ie under the Legal Deposit Libraries Act 2003 s 10(5): see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 902. At the date at which this volume states the law no such regulations had been made.

6 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20A(1)(a) (as added: see note 4 supra).

7 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

8 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20A(1)(b) (as added: see note 4 supra).

9 Ibid reg 20A(1)(c) (as added: see note 4 supra).

10 'Relevant material' has the same meaning as in the Legal Deposit Libraries Act 2003 s 7 (see PARA 364 note 10 ante): Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20A(4) (as added: see note 4 supra).

11 Ie under the Legal Deposit Libraries Act 2003 s 7: see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 899. At the date at which this volume states the law no such regulations had been made.

12 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20A(2) (as added: see note 4 supra). Regulations under the Copyright, Designs and Patents Act 1988 s 44A(3) (as added) (see PARA 364 ante) exclude the application of the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20A(2) (as added) in relation to prescribed activities in relation to relevant material as (and to the extent that) they exclude the application of the Copyright, Designs and Patents Act 1988 s 44A(2) (as added) (see PARA 364 ante) in relation to those activities: Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20A(3) (as so added).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(vii) Exceptions to Database Right/765. Parliamentary and judicial proceedings.

765. Parliamentary and judicial proceedings.

Database right¹ in a database² is not infringed³ by anything done for the purposes of Parliamentary or judicial proceedings or for the purpose of reporting such proceedings⁴.

1 For the meaning of 'database right' see PARA 736 ante.

2 For the meaning of 'database' see PARA 731 ante.

3 As to infringement of database right see PARA 762 ante.

4 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20(2), Sch 1 para 1. As to the equivalent provision in relation to copyright see PARA 365 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(vii) Exceptions to Database Right/766. Royal Commissions and statutory inquiries.

766. Royal Commissions and statutory inquiries.

Database right¹ in a database² is not infringed³:

- 510 (1) by anything done for the purposes of the proceedings of a Royal Commission⁴ or statutory inquiry⁵ or for the purpose of reporting any such proceedings held in public⁶;
- 511 (2) by the issue to the public of copies of the report of a Royal Commission or statutory inquiry containing the contents of the database⁷.

1 For the meaning of 'database right' see PARA 736 ante.

2 For the meaning of 'database' see PARA 731 ante.

3 As to infringement of database right see PARA 762 ante.

4 'Royal Commission' has the same meaning as in the Copyright, Designs and Patents Act 1988 s 46 (see PARA 366 note 2 ante): Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20(2), Sch 1 para 2(3).

5 Ibid Sch 1 para 2(1)(a). 'Statutory inquiry' has the same meaning as in the Copyright, Designs and Patents Act 1988 s 46 (see PARA 366 note 3 ante): Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 1 para 2(3).

6 Ibid Sch 1 para 2(1)(b). As to the equivalent provision in relation to copyright see PARA 366 ante.

7 Ibid Sch 1 para 2(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(vii) Exceptions to Database Right/767. Material open to public inspection or on official register.

767. Material open to public inspection or on official register.

Where the contents of a database¹ are open to public inspection pursuant to a statutory requirement², or are on a statutory register³, database right⁴ in the database is not infringed⁵ by the extraction⁶ of all or a substantial⁷ part of the contents containing factual information of any description, by or with the authority of the appropriate person⁸, for a purpose which does not involve re-utilisation⁹ of all or a substantial part of the contents¹⁰.

Where the contents of a database are open to public inspection pursuant to a statutory requirement, database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of enabling the contents to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed¹¹.

Where the contents of a database which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contain information about matters of general scientific, technical, commercial or economic interest, database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of disseminating that information¹².

1 For the meaning of 'database' see PARA 731 ante.

2 'Statutory requirement' means a requirement imposed by provision made by or under an enactment: Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20(2), Sch 1 para 3(4). For the meaning of 'enactment' see PARA 55 note 4 ante.

3 'Statutory register' means a register maintained in pursuance of a statutory requirement: *ibid* Sch 1 para 3(4).

4 For the meaning of 'database right' see PARA 736 ante.

5 As to infringement of database right see PARA 762 ante.

6 For the meaning of 'extraction' see PARA 737 ante.

7 For the meaning of 'substantial' see PARA 736 note 2 ante.

8 'Appropriate person' means the person required to make the material open to public inspection or, as the case may be, the person maintaining the register: Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 1 para 3(4).

9 For the meaning of 're-utilisation' see PARA 737 ante.

10 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 1 para 3(1). As to the equivalent provision in relation to copyright see PARA 367 ante.

11 *Ibid* Sch 1 para 3(2).

12 *Ibid* Sch 1 para 3(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(vii) Exceptions to Database Right/768. Material communicated to the Crown in the course of public business.

768. Material communicated to the Crown in the course of public business.

Where the contents of a database¹ have in the course of public business² been communicated to the Crown for any purpose, by or with the licence of the owner of the database right³, and a document or other material thing recording or embodying the contents of the database is owned by or in the custody or control of the Crown⁴, the Crown may, for the purpose for which the contents of the database were communicated to it, or any related purpose which could reasonably have been anticipated by the owner of the database right in the database, extract⁵ or re-utilise⁶ all or a substantial⁷ part of the contents without infringing database right⁸ in the database⁹. The Crown may not re-utilise the contents of a database by virtue of these provisions if the contents have previously been published otherwise than by virtue of these provisions¹⁰.

The above provisions have effect subject to any agreement to the contrary between the Crown and the owner of the database right in the database¹¹.

1 For the meaning of 'database' see PARA 731 ante.

2 'Public business' includes any activity carried on by the Crown: Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20(2), Sch 1 para 4(4).

3 For the meaning of 'database right' see PARA 736 ante. As to who is the first owner of database right see PARA 742 ante.

4 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 1 para 4(1).

5 For the meaning of 'extraction' see PARA 737 ante.

6 For the meaning of 're-utilisation' see PARA 737 ante.

7 For the meaning of 'substantial' see PARA 736 note 2 ante.

8 As to infringement of database right see PARA 762 ante.

9 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, Sch 1 para 4(2). As to the equivalent provision in relation to copyright see PARA 368 ante.

10 Ibid Sch 1 para 4(3).

11 Ibid Sch 1 para 4(5).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(vii) Exceptions to Database Right/769. Public records.

769. Public records.

The contents of a database¹ which are comprised in public records² which are open to public inspection³ may be re-utilised⁴ by or with the authority of any officer duly appointed⁵ without infringement of database right⁶ in the database⁷.

1 For the meaning of 'database' see PARA 731 ante.

2 I.e. within the meaning of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835 et seq.

3 I.e. in pursuance of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923, as the case may be.

4 For the meaning of 're-utilisation' see PARA 737 ante.

5 I.e. under the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923, as the case may be.

6 For the meaning of 'database right' see PARA 736 ante. As to infringement of database right see PARA 762 ante.

7 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20(2), Sch 1 para 5. As to the equivalent provision in relation to copyright see PARA 369 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(vii) Exceptions to Database Right/770. Acts done under statutory authority.

770. Acts done under statutory authority.

Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe database right¹ in a database². This provision applies in relation to an enactment contained in Northern Ireland legislation as it applies in relation to an Act of Parliament³.

Nothing in these provisions is to be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment⁴.

1 For the meaning of 'database right' see PARA 736 ante. As to infringement of database right see PARA 762 ante.

2 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20(2), Sch 1 para 6(1). For the meaning of 'database' see PARA 731 ante. As to the equivalent provision in relation to copyright see PARA 370 ante.

3 Ibid Sch 1 para 6(2). As to the constitutional position of Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 67 et seq.

4 Ibid Sch 1 para 6(3). For the meaning of 'enactment' see PARA 55 note 4 ante.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(vii) Exceptions to Database Right/771. Acts permitted on assumption as to expiry of database right.

771. Acts permitted on assumption as to expiry of database right.

Database right¹ in a database² is not infringed³ by the extraction⁴ or re-utilisation⁵ of a substantial⁶ part of the contents of the database at a time when, or in pursuance of arrangements made at a time when, it is not possible by reasonable inquiry to ascertain the identity of the maker⁷ and it is reasonable to assume that database right has expired⁸. In the case of a database alleged to have been made jointly⁹, these provisions apply in relation to each person alleged to be one of the makers¹⁰.

1 For the meaning of 'database right' see PARA 736 ante.

2 For the meaning of 'database' see PARA 731 ante.

3 As to infringement of database right see PARA 762 ante.

4 For the meaning of 'extraction' see PARA 737 ante.

5 For the meaning of 're-utilisation' see PARA 737 ante.

6 For the meaning of 'substantial' see PARA 736 note 2 ante.

7 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 21(1)(a). As to who is the maker of a database see PARAS 740-741 ante.

8 Ibid reg 21(1)(b). As to the duration of database right see PARAS 743-744 ante.

9 For the meaning of 'jointly' see PARA 741 ante.

10 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 21(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(viii) Remedies for Infringement/772. Application of copyright provisions to database right.

(viii) Remedies for Infringement

772. Application of copyright provisions to database right.

The provisions of the Copyright, Designs and Patents Act 1988 relating to the rights and remedies of a copyright owner and of an exclusive licensee¹, delivery up², and the jurisdiction of county court³, apply in relation to database right⁴ and databases⁵ in which that right subsists⁶ as they apply in relation to copyright and copyright works⁷.

1 Ie the Copyright, Designs and Patents Act 1988 ss 96-102: see PARA 410 et seq ante.

2 Ie ibid s 113 (see PARA 420 ante) and s 114 (see PARA 422 ante).

3 Ie ibid s 115: see PARA 427 note 4 ante.

4 For the meaning of 'database right' see PARA 736 ante.

5 For the meaning of 'database' see PARA 731 ante.

6 As to the subsistence of database right see PARAS 736, 739 ante.

7 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 23 (substituted by SI 2006/1028).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/8. DATABASES AND DATABASE RIGHT/(3) DATABASE RIGHT/(viii) Remedies for Infringement/773. Presumptions relevant to database right.

773. Presumptions relevant to database right.

The following presumptions apply in proceedings brought with respect to a database¹.

Where a name purporting to be that of the maker² appeared on copies of the database as published, or on the database when it was made, the person whose name appeared is to be presumed, until the contrary is proved:

- 512 (1) to be the maker of the database³; and
- 513 (2) to have made it in circumstances not falling within the provisions⁴ relating to the making of a database in the course of employment, by Her Majesty or an officer or servant of the Crown, or by or under the direction or control of the House of Commons or the House of Lords⁵.

Where copies of the database as published bear a label or a mark stating that a named person was the maker of the database⁶, or that the database was first published in a specified year⁷, the label or mark is admissible as evidence of the facts stated and is to be presumed to be correct until the contrary is proved⁸.

In the case of a database alleged to have been made jointly⁹, the above provisions, so far as applicable, apply in relation to each person alleged to be one of the makers¹⁰.

1 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 22(1). For the meaning of 'database' see PARA 731 ante.

2 As to who is the maker of a database see PARAS 740-741 ante.

3 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 22(2)(a).

4 *Ibid* reg 14(2)-(4): see PARA 740 ante.

5 *Ibid* reg 22(2)(b).

6 *Ibid* reg 22(3)(a).

7 *Ibid* reg 22(3)(b).

8 *Ibid* reg 22(3).

9 For the meaning of 'jointly' see PARA 741 ante.

10 Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 22(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(1) IN GENERAL/774. In general.

9. ARTIST'S RESALE RIGHT

(1) IN GENERAL

774. In general.

The Artist's Resale Right Regulations 2006¹ implement the European Directive² on the resale right for the benefit of the author of an original work of art, and also amount to the implementation by the United Kingdom³ of the option given by the Berne Copyright Convention⁴.

The regulations create a new intellectual property right, known as a 'resale right'⁵, to be enjoyed by the creator of a work⁶ of art and that artist's successors in title for as long as copyright continues to subsist in the work⁷. The right consists in the entitlement to claim a royalty on the resale of the work following its first transfer by the artist⁸.

The regulations extend to the whole of the United Kingdom⁹.

1 Ie the Artist's Resale Right Regulations 2006, SI 2006/346.

2 Ie European Parliament and Council Directive 2001/84 (OJ L272, 13.10.2001, p 32).

3 For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

4 Ie the option given by the International Convention further revising the Berne Convention for the Protection of Literary and Artistic Works (Paris, 24 July 1971; Cmnd 5002) art 14 (bis). As to the Convention see PARA 452 ante.

5 For the meaning of 'resale right' see PARA 775 post.

6 For the meaning of 'work' see PARA 777 post.

7 See PARA 775 et seq post.

8 As to the royalty see PARA 775 post; and as to liability to pay resale royalty see PARA 782 post.

9 Artist's Resale Right Regulations 2006, SI 2006/346, reg 1(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S REALE RIGHT/(2) REALE RIGHT/775. Artist's resale right.

(2) REALE RIGHT

775. Artist's resale right.

The author¹ of a work in which copyright subsists² has³ a right, known as a 'resale right'⁴, to a royalty on any sale⁵ of the work which is a resale⁶ subsequent to the first transfer of ownership by the author⁷. This royalty is called the 'resale royalty'⁸. The royalty is an amount based on the sale price⁹ and is calculated as percentage amounts of consecutive portions of the sale price but so that the total amount of royalty payable on the sale does not in any event exceed 12,500 euro¹⁰.

Resale right in a work continues to subsist so long as copyright subsists in the work¹¹.

The Artist's Resale Right Regulations 2006 do not apply to sales where the contract date¹² preceded 14 February 2006¹³; but they apply notwithstanding that the work sold was made before that date¹⁴.

1 'Author', in relation to a work, means the person who creates it: Artist's Resale Right Regulations 2006, SI 2006/346, reg 2. For the meaning of 'work' see PARA 777 post. As to joint authorship see PARA 779 post; and as to proof of authorship see PARA 780 post.

2 For the meaning of 'copyright', and as to works in which copyright subsists, see PARA 57 ante.

3 le in accordance with the Artist's Resale Right Regulations 2006, SI 2006/346.

4 'Resale right' has the meaning given in ibid reg 3 (see the text to note 7 infra); and, unless the context otherwise requires, includes a share in resale right: reg 2.

5 'Sale' has the meaning given in the Sale of Goods Act 1979 s 2: Artist's Resale Right Regulations 2006, SI 2006/346, reg 2. A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price: Sale of Goods Act 1979 s 2(1). There may be a contract of sale between one part owner and another: s 2(2). A contract of sale may be absolute or conditional: s 2(3). Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale: s 2(4). Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled, the contract is called an agreement to sell: s 2(5). An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred: s 2(6). See further SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 27 et seq.

6 For the meaning of 'resale' see PARA 778 post.

7 Artist's Resale Right Regulations 2006, SI 2006/346, reg 3(1). For these purposes, 'transfer of ownership by the author' includes in particular:

14 (1) transmission of the work from the author by testamentary disposition, or in accordance with the rules of intestate succession (reg 3(5)(a));

15 (2) disposal of the work by the author's personal representatives for the purposes of the administration of his estate (reg 3(5)(b)); and

16 (3) disposal of the work by an official receiver or, in Northern Ireland, the Official Receiver for Northern Ireland, or a trustee in bankruptcy, for the purposes of the realisation of the author's estate (reg 3(5)(c)).

As to testamentary disposition and intestate succession see EXECUTORS AND ADMINISTRATORS. As to the official receiver see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 31 et seq; and as to the trustee in bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 316 et seq. As to the exercise

of resale right see PARA 781 post; as to assignment of resale right see PARA 785 post; and as to persons entitled on succession see PARA 787 post.

8 Ibid regs 2, 3(1).

9 The 'sale price' is the price obtained for the sale, net of the tax payable on the sale, and converted into euro at the European Central Bank reference rate prevailing at the contract date: *ibid* regs 2, 3(4).

10 Ibid reg 3(3), Sch 1. As to the calculation of the royalty see Sch 1. As to liability to pay resale royalty see PARA 782 post.

11 Ibid reg 3(2). As to the duration of copyright see PARA 93 et seq ante.

12 'Contract date', in relation to a sale, means the time at which the contract of sale was made; and 'contract of sale' has the meaning given in the Sale of Goods Act 1979 s 2 (see note 5 *supra*): Artist's Resale Right Regulations 2006, SI 2006/346, reg 2.

13 Ibid reg 16(1)(a). The date mentioned in the text is the date on which the Artist's Resale Right Regulations 2006, SI 2006/346, came into force: see reg 1(1).

14 Ibid reg 16(1)(b).

UPDATE

775 Artist's resale right

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(2) RESALE RIGHT/776. Qualifying persons.

776. Qualifying persons.

Resale right¹ may be exercised in respect of a sale² only by a person who, at the contract date³, is a qualifying individual⁴ or a qualifying body⁵.

Resale right may vest by operation of law in a personal representative of a deceased person⁶, or an official receiver⁷ or a trustee in bankruptcy⁸, and nothing in these provisions prevents a resale right from being exercised by any person acting in that capacity⁹.

Nothing in these provisions prevents a resale right from being: (1) held, and exercised in respect of a sale, by any person acting as trustee for the person who would otherwise be entitled to exercise the right ('the beneficiary')¹⁰; or (2) transferred to such a trustee, or from the trustee to the beneficiary¹¹.

1 For the meaning of 'resale right' see PARA 775 ante.

2 For the meaning of 'sale' see PARA 775 note 5 ante.

3 For the meaning of 'contract date' see PARA 775 note 12 ante.

4 Artist's Resale Right Regulations 2006, SI 2006/346, reg 10(1)(a). A 'qualifying individual' is a natural person who is a national of an EEA state (regs 2, 10(3)(a)), or a national of a listed country (regs 2, 10(3)(b)). As to the listed countries see reg 10(3), Sch 2. 'EEA state' means a member state, Iceland, Liechtenstein or Norway: reg 2. For the meaning of 'member state' see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.

5 Artist's Resale Right Regulations 2006, SI 2006/346, reg 10(1)(b). A 'qualifying body' is a body which: (1) is a charity within the meaning of the Charities Act 1993 s 96(1) (see CHARITIES vol 8 (2010) PARA 1 et seq) or the Charities Act (Northern Ireland) 1964 s 35 (Artist's Resale Right Regulations 2006, SI 2006/346, regs 2, 7(4)(a)); (2) is a Scottish charity (regs 2, 7(4)(b)); or (3) is a foreign charity, and has its central administration in an EEA state or a listed country (regs 2, 7(4)(c)). 'Scottish charity' means a body entered in the Scottish Charity Register under the Charities and Trustee Investment (Scotland) Act 2005 s 3 or a 'recognised body' within the meaning of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 s 1(7) (Artist's Resale Right Regulations 2006, SI 2006/346, reg 7(5)(a)); and 'foreign charity' means a body which is established outside the United Kingdom for purposes similar to those for which a body within head (1) or head (2) supra may be established, and which is subject to similar rules regarding the distribution and application of its assets (reg 7(5)(b)). For the meaning of 'United Kingdom' see PARA 3 note 1 ante.

6 Ibid reg 10(5)(a). As to personal representatives see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 1 et seq.

7 Or, in Northern Ireland, the Official Receiver for Northern Ireland. As to the official receiver see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 31 et seq.

8 Artist's Resale Right Regulations 2006, SI 2006/346, reg 10(5)(b). As to the trustee in bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 316 et seq.

9 Ibid reg 10(5).

10 Ibid reg 11(a).

11 Ibid reg 11(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(2) RESALE RIGHT/777. Works covered.

777. Works covered.

'Work' means any work of graphic or plastic art such as a picture, a collage, a painting, a drawing, an engraving, a print, a lithograph, a sculpture, a tapestry, a ceramic, an item of glassware or a photograph¹. However, a copy of a work is not to be regarded as a work unless the copy is one of a limited number which have been made by the author² or under his authority³.

1 Artist's Resale Right Regulations 2006, SI 2006/346, reg 4(1).

2 For the meaning of 'author' see PARA 775 note 1 ante.

3 Artist's Resale Right Regulations 2006, SI 2006/346, reg 4(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(2) RESALE RIGHT/778. Meaning of 'resale'.

778. Meaning of 'resale'.

The sale¹ of a work² may be regarded as a resale³ notwithstanding that the first transfer of ownership was not made for a money, or any, consideration⁴.

The sale of a work may be regarded as a resale only if the following conditions are satisfied in respect of that sale⁵. The conditions are that: (1) the buyer or the seller or, where the sale takes place through an agent, the agent of the buyer or the seller, is acting in the course of a business of dealing in works of art⁶; and (2) the sale price⁷ is not less than 1,000 euro⁸.

The sale of a work is not to be regarded as a resale if the seller previously acquired the work directly from the author less than three years before the sale⁹, and the sale price does not exceed 10,000 euro¹⁰.

1 For the meaning of 'sale' see PARA 775 note 5 ante.

2 For the meaning of 'work' see PARA 777 ante.

3 'Resale' is to be construed in accordance with the Artist's Resale Right Regulations 2006, SI 2006/346, reg 12 (see the text and notes 4-10 infra): reg 2.

4 Ibid reg 12(1).

5 Ibid reg 12(2).

6 Ibid reg 12(3)(a).

7 For the meaning of 'sale price' see PARA 775 note 9 ante.

8 Artist's Resale Right Regulations 2006, SI 2006/346, reg 12(3)(b).

9 Ibid reg 12(4)(a).

10 Ibid reg 12(4)(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(2) RESALE RIGHT/779. Joint authorship.

779. Joint authorship.

In the case of a work of joint authorship, the resale right¹ belongs to the authors² as owners in common³. The right is held in equal shares or in such other shares as may be agreed⁴. Such an agreement must be in writing⁵ signed by or on behalf of each party to the agreement⁶.

'Work of joint authorship' means a work⁷ created by two or more authors⁸.

1 For the meaning of 'resale right' see PARA 775 ante.

2 For the meaning of 'author' see PARA 775 note 1 ante.

3 Artist's Resale Right Regulations 2006, SI 2006/346, reg 5(1).

4 Ibid reg 5(2).

5 For the meaning of 'writing' see PARA 522 note 7 ante.

6 Artist's Resale Right Regulations 2006, SI 2006/346, reg 5(3).

7 For the meaning of 'work' see PARA 777 ante.

8 Artist's Resale Right Regulations 2006, SI 2006/346, regs 2, 5(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(2) RESALE RIGHT/780. Proof of authorship.

780. Proof of authorship.

Where a name purporting to be that of the author¹ appeared on the work² when it was made, the person whose name appeared is, unless the contrary is proved, presumed to be the author of the work³.

In the case of a work alleged to be a work of joint authorship⁴, this presumption applies in relation to each person alleged to be one of the authors⁵.

1 For the meaning of 'author' see PARA 775 note 1 ante.

2 For the meaning of 'work' see PARA 777 ante.

3 Artist's Resale Right Regulations 2006, SI 2006/346, reg 6(1).

4 For the meaning of 'work of joint authorship' see PARA 779 ante.

5 Artist's Resale Right Regulations 2006, SI 2006/346, reg 6(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(2) RESALE RIGHT/781. Collective management.

781. Collective management.

Resale right¹ may be exercised only through a collecting society².

Where the holder of the resale right has not transferred the management of his right³ to a collecting society, the collecting society which manages copyright⁴ on behalf of artists is deemed to be mandated to manage his right⁵. A holder to whom this provision applies has the same rights and obligations, in respect of the management of his right, as have holders who have transferred the management of their right to the collecting society concerned⁶.

1 For the meaning of 'resale right' see PARA 775 ante.

2 Artist's Resale Right Regulations 2006, SI 2006/346, reg 14(1). 'Collecting society' means a society or other organisation which has as its main object, or one of its main objects, the administration of rights on behalf of more than one artist: regs 2, 14(5)(a).

3 The management of resale right is the collection of resale royalty on behalf of the holder of the right in return for a fixed fee or a percentage of the royalty: *ibid* reg 14(5)(b). For the meaning of 'resale royalty' see PARA 775 ante.

4 For the meaning of 'copyright' see PARA 57 ante. As to collective licensing of copyright see PARA 182 ante.

5 Artist's Resale Right Regulations 2006, SI 2006/346, reg 14(2). Where there is more than one such collecting society, the holder may choose which of them is so mandated: reg 14(3).

6 *Ibid* reg 14(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(2) RESALE RIGHT/782. Liability to pay resale royalty.

782. Liability to pay resale royalty.

The following are jointly and severally liable to pay the resale royalty¹ due in respect of a sale²: (1) the seller³; and (2) the relevant person⁴.

The relevant person is a person who satisfies the condition as to qualification⁵ and who is:

- 514 (a) the agent of the seller⁶; or
- 515 (b) where there is no such agent, the agent of the buyer⁷; or
- 516 (c) where there are no such agents, the buyer⁸.

Liability arises on the completion of the sale; however, a person who is liable may withhold payment until evidence of entitlement to be paid the royalty is produced⁹. Any liability to pay resale royalty in respect of a resale right¹⁰ which belongs to two or more persons as owners in common is discharged by a payment of the total amount of royalty to one of those persons¹¹.

1 For the meaning of 'resale royalty' see PARA 775 ante.

2 For the meaning of 'sale' see PARA 775 note 5 ante.

3 Artist's Resale Right Regulations 2006, SI 2006/346, reg 13(1)(a).

4 Ibid reg 13(1)(b).

5 Ie the condition mentioned in ibid reg 12(3)(a): see PARA 778 ante.

6 Ibid reg 13(2)(a).

7 Ibid reg 13(2)(b).

8 Ibid reg 13(2)(c).

9 Ibid reg 13(3).

10 For the meaning of 'resale right' see PARA 775 ante.

11 Artist's Resale Right Regulations 2006, SI 2006/346, reg 13(4).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(2) RESALE RIGHT/783. Right to information.

783. Right to information.

A holder of resale right¹ in respect of a sale², or a person acting on his behalf, has the right to obtain information by making a request under the following provisions³.

Such a request may be made to any person who, in relation to that sale, satisfies the qualification condition⁴, but must be made within three years of the sale to which it relates⁵. The information that may be so requested is any that may be necessary in order to secure payment of the resale royalty⁶, and in particular to ascertain the amount of royalty that is due⁷ and, where the royalty is not paid by the person to whom the request is made, the name and address of any person who is liable⁸.

The person to whom the request is made must do everything within his power to supply the information requested within 90 days of the receipt of the request⁹.

If that information is not supplied within that period, the person making the request may, in accordance with rules of court, apply to the county court for an order requiring the person to whom the request is made to supply the information¹⁰.

Information obtained under these provisions must be treated as confidential¹¹.

1 For the meaning of 'resale right' see PARA 775 ante.

2 For the meaning of 'sale' see PARA 775 note 5 ante.

3 Artist's Resale Right Regulations 2006, SI 2006/346, reg 15(1).

4 Ibid reg 15(2)(a). The qualification condition is the condition mentioned in reg 12(3)(a): see PARA 778 head (1) ante.

5 Ibid reg 15(2)(b).

6 For the meaning of 'resale royalty' see PARA 775 ante. As to liability to pay resale royalty see PARA 782 ante.

7 Artist's Resale Right Regulations 2006, SI 2006/346, reg 15(3)(a).

8 Ibid reg 15(3)(b).

9 Ibid reg 15(4).

10 Ibid reg 15(5). As to the rules of court relating to applications generally see CIVIL PROCEDURE.

11 Ibid reg 15(7).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(2) RESALE RIGHT/784. Waiver; agreements to share resale right.

784. Waiver; agreements to share resale right.

A waiver of a resale right¹ has no effect².

An agreement to share or repay resale royalties³ is void⁴. However, this does not affect any agreement made for the purposes of the management⁵ of resale right⁶.

1 For the meaning of 'resale right' see PARA 775 ante.

2 Artist's Resale Right Regulations 2006, SI 2006/346, reg 8(1).

3 For the meaning of 'resale royalty' see PARA 775 ante.

4 Artist's Resale Right Regulations 2006, SI 2006/346, reg 8(2).

5 ie in accordance with ibid reg 14: see PARA 781 ante.

6 Ibid reg 8(3).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(3) TRANSMISSION OF RESALE RIGHT/785. Assignment.

(3) TRANSMISSION OF RESALE RIGHT

785. Assignment.

Resale right¹ is not assignable². However, this does not prevent the transfer of a resale right which was transmitted³ to a qualifying body⁴ on succession, or which is deemed to have been so transmitted⁵, provided that the transfer is to another qualifying body⁶.

Nothing in these provisions prevents a resale right from being: (1) held, and exercised in respect of a sale⁷, by any person acting as trustee for the person who would otherwise be entitled to exercise the right ('the beneficiary')⁸; or (2) transferred to such a trustee, or from the trustee to the beneficiary⁹.

1 For the meaning of 'resale right' see PARA 775 ante.

2 Artist's Resale Right Regulations 2006, SI 2006/346, reg 7(1).

3 Ie under ibid reg 9: see PARA 787 post.

4 For the meaning of 'qualifying body' see PARA 776 note 5 ante.

5 Ie under the Artist's Resale Right Regulations 2006, SI 2006/346, reg 16: see PARA 787 post.

6 Ibid reg 7(3).

7 For the meaning of 'sale' see PARA 775 note 5 ante.

8 Artist's Resale Right Regulations 2006, SI 2006/346, reg 11(a).

9 Ibid reg 11(b).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(3) TRANSMISSION OF RESALE RIGHT/786.
Charge.

786. Charge.

Any charge on a resale right¹ is void².

1 For the meaning of 'resale right' see PARA 775 ante.

2 Artist's Resale Right Regulations 2006, SI 2006/346, reg 7(2).

Halsbury's Laws of England/COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS (VOLUME 9(2) (2006 REISSUE))/9. ARTIST'S RESALE RIGHT/(3) TRANSMISSION OF RESALE RIGHT/787-900. Persons entitled on succession.

787-900. Persons entitled on succession.

Resale right¹ may be transmitted only by a person who, at the time of his death, is a qualifying individual². Subject to this condition, resale right in respect of a work³ is transmissible as personal or moveable property by testamentary disposition or in accordance with the rules of intestate succession; and it may be further so transmitted by any person into whose hands it passes⁴. Resale right may be so transmitted only to a natural person⁵ or a qualifying body⁶. Where a resale right is transmitted to more than one person, it belongs to them as owners in common⁷.

Nothing in the above provisions prevents a resale right from being: (1) held, and exercised in respect of a sale⁸, by any person acting as trustee for the person who would otherwise be entitled to exercise the right ('the beneficiary')⁹; or (2) transferred to such a trustee, or from the trustee to the beneficiary¹⁰.

Where the author¹¹ of a work, or a person to whom the resale right in that work is deemed to have been transmitted¹², died before 14 February 2006¹³ and was at the time of his death a qualifying individual:

- 517 (a) if he was the owner of the copyright¹⁴ in the work immediately before his death, and on his death a qualifying person¹⁵ became beneficially entitled to that copyright, or to part of it, the resale right in the work is deemed to have been transmitted to that person¹⁶;
- 518 (b) if he was the owner of the work, but not the copyright in it, immediately before his death, and on his death a qualifying person became beneficially entitled to the work, the resale right is deemed to have been transmitted to that person¹⁷;
- 519 (c) otherwise, the resale right is deemed to have been transmitted to the qualifying persons who were beneficially entitled to the residue of his personal estate¹⁸.

Where the author of the work was one of a number of joint authors¹⁹, the right deemed to have been transmitted by the author²⁰ is one of that number of equal shares in the resale right²¹. Where a resale right is deemed to have been transmitted to more than one person under head (a), (b) or (c) above, the resale right is deemed to have been transmitted to them in equal shares as owners in common²².

Where a resale right is transmitted²³, or is deemed to have been transmitted²⁴, under these provisions, it may not be exercised in respect of any sale where the contract date precedes 1 January 2010²⁵.

1 For the meaning of 'resale right' see PARA 775 ante.

2 Artist's Resale Right Regulations 2006, SI 2006/346, reg 10(2). For the meaning of 'qualifying individual' see PARA 776 note 4 ante.

3 For the meaning of 'work' see PARA 777 ante.

4 Artist's Resale Right Regulations 2006, SI 2006/346, reg 9(1). As to testamentary disposition and intestate succession see EXECUTORS AND ADMINISTRATORS.

- 5 Ibid reg 9(2)(a). Notwithstanding reg 9(2), a resale right may be transmitted as bona vacantia: reg 9(3). Nothing in reg 10 (see PARA 776 ante) prevents a resale right from being exercised after it has been transmitted as bona vacantia: reg 10(4). As to bona vacantia see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 933 et seq; CROWN PROPERTY vol 12(1) (Reissue) PARA 235 et seq.
- 6 Ibid reg 9(2)(b). See also note 5 supra. For the meaning of 'qualifying body' see PARA 776 note 5 ante.
- 7 Ibid reg 9(4).
- 8 For the meaning of 'sale' see PARA 775 note 5 ante.
- 9 Artist's Resale Right Regulations 2006, SI 2006/346, reg 11(a).
- 10 Ibid reg 11(b).
- 11 For the meaning of 'author' see PARA 775 note 1 ante.
- 12 Ie under the Artist's Resale Right Regulations 2006, SI 2006/346, reg 16: see the text to notes 13-22 infra.
- 13 Ie the date on which the Artist's Resale Right Regulations 2006, SI 2006/346, came into force: see reg 1(1).
- 14 For the meaning of 'copyright' see PARA 57 ante. As to who is the owner of copyright in a work see PARA 118 et seq ante.
- 15 'Qualifying person' means a person to whom a resale right may be transmitted under the Artist's Resale Right Regulations 2006, SI 2006/346, reg 9(2) and (3) (see the text and notes 5-6 supra): reg 16(5).
- 16 Ibid reg 16(2)(a).
- 17 Ibid reg 16(2)(b).
- 18 Ibid reg 16(2)(c).
- 19 As to joint authorship see PARA 779 ante.
- 20 Ie under the Artist's Resale Right Regulations 2006, SI 2006/346, reg 16: see heads (1)-(3) in the text.
- 21 Ibid reg 16(3).
- 22 Ibid reg 16(4).
- 23 Ie under ibid reg 9: see the text to notes 3-7 supra.
- 24 Ie under ibid reg 16: see the text to notes 11-22 supra.
- 25 Ibid reg 17.

UPDATE

787-900 Persons entitled on succession

TEXT AND NOTE 25--Date is now 1 January 2012: SI 2006/346 reg 17 (amended by SI 2009/2792).